EXHIBIT 3

Deposition Transcript of Todd Godfrey, dated October 5, 2022

(REDACTED)

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Page 1

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 1            IN THE UNITED STATES DISTRICT COURT
 2                   DISTRICT OF NEVADA
 3
          ANTHONY SESSA and MARK   )  Rule 30(b)(6) and
 4        SESSA, on behalf of      )  Individual
          themselves and all       )  Video-recorded
 5        others similarly         )  Deposition of:
          situated,                )
 6                                  )  Ancestry.Com Operations
              Plaintiffs,          )  Inc., Ancestry.Com Inc.,
 7                                  )  and Ancestry.Com. LLC,
          vs.                      )
 8                                  )  By: TODD GODFREY
          ANCESTRY.COM             )
 9        OPERATIONS INC., a       )
          ANCESTRY.COM             )  Case No.
10        OPERATIONS INC., a       )  2:20-cv-02292-GMN-BNW
          Virginia Corporation;    )
11        ANCESTRY.COM INC., a     )  Hon. Gloria M. Navarro
          Delaware Corporation;    )
12        and ANCESTRY.COM LLC,    )  Magistrate Brenda Weksler
          a Delaware Limited       )
13        Liability Company,       )
                                    )
14            Defendants.          )
15
16                   *CONFIDENTIAL*
17
18
19             October 5, 2022 * 9:04 a.m.
20
21               Location:  Zoom
22
23            Reporter:  Ann Fleming, RPR
24
25        Videographer:  Andrea Francis, CLVS
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Page 2

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 1        A P P E A R A N C E S
 2  FOR THE PLAINTIFFS:
 3      Raina C  Borrelli
        TURKE & STRAUSS LLP
 4      613 Williamson Street, Suite 201
        Madison, Wisconsin 53703
 5      (608) 237-1775
        raina@turkestrauss com
 6
        Benjamin R  Osborn
 7      LAW OFFICES OF BENJAMIN R  OSBORN
        102 Bergen Street
 8      Brooklyn, New York 11201
        (347) 645-0464
 9      ben@benosbornlaw com
10
    FOR THE DEFENDANTS:
11
        John Wall Baumann
12      QUINN EMANUEL URQUHART & SULLIVAN LLP
        865 S  Figueroa Street, 10th Floor
13      Los Angeles, California 90017
        (213) 443-3000
14      jackbaumann@quinnemanuel com
15      Christina Aide Henriquez
        QUINN EMANUEL URQUHART & SULLIVAN LLP
16      555 Twin Dolphin Drive, 5th Floor
        Redwood Shores, California 94065
17      (650) 801-5000
        christinahenriquez@quinnemanuel com
18
        Kathleen McCarthy
19      Vice President, Legal
        Ancestry
20      153 Townsend Street, Suite 800
        San Francisco, California 94107
21      kmccarthy@ancestry com
22
    ALSO PRESENT:
23
        Abraham Barkhordar
24
25
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Page 3

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 1          I N D E X
 2  TODD GODFREY              PAGE
 3    Examination by Ms. Borrelli       6
 4
 5
 6          E X H I B I T S
 7  NUMBER        DESCRIPTION        PAGE
 8
    Exhibit 1  Plaintiffs' Notice of Deposition      10
 9    Pursuant to Rule 30(b)(6)
10  Exhibit 2  Class Action Complaint        56
11  Exhibit 3  Search Results For Tony Sessa      62
12  Exhibit 4  Search Form        64
13  Exhibit 5  School Yearbook Submission Program   73
        Form
14
    Exhibit 6  Ancestry's Responses and Objections   79
15    to Plaintiffs' First Set of
        Interrogatories
16
    Exhibit 7  Excel Spreadsheet        83
17
    Exhibit 8  Third Addendum to Content License    93
18    Agreement
19  Exhibit 9  Fourth Addendum to Content License  101
        Agreement
20
    Exhibit 10  Spreadsheet        108
21
    Exhibit 11  Fifth Addendum to Content License  111
22    Agreement
23  Exhibit 12  Amended and Restated Seventh     113
        Addendum to Content to License
24    Agreement
25  Exhibit 13  Spreadsheet        118
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Page 4

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 1  Exhibit 14  Amendment Number 2 and Supplement    119
        to the Digital Content Exchange
 2      Agreement
 3  Exhibit 15  Spreadsheet        124
 4  Exhibit 16  Screenshot        136
 5  Exhibit 17  Terms and Conditions - Revision as    140
        of October 6, 2010
 6
    Exhibit 18  Search Screenshot        165
 7
    Exhibit 19  Video        176
 8
 9
10
11
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Page 5

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 1        P R O C E E D I N G S
 2
 3      VIDEOGRAPHER:  Good morning.  We are going
 4  on the record at 9:04 a.m. on October 5th, 2022.
 5  Please note this deposition is being conducted
 6  virtually.  Quality of recording depends on quality of
 7  camera and internet connection of participants.  What
 8  is seen from the witness and heard on the screen is
 9  what will be recorded.  Audio video recording will
10  continue to take place unless all parties agree to go
11  off the record.  This is the video-recorded deposition
12  of Todd Godfrey in the matter of Anthony Sessa and Mark
13  Sessa versus Ancestry, et al.
14      My name is Andrea Francis representing
15  Veritext.  I am the videographer.  At this time can all
16  counsel present, please, state their appearance, along
17  with who they represent beginning with the noticing
18  attorney.
19      MS. BORRELLI:  Raina Borrelli from Turke &
20  Strauss on behalf of the plaintiffs and joined by
21  Abraham Barkhordar from Morgan & Morgan and Ben Osborn
22  of Benjamin Osborn Law Office on behalf of the
23  plaintiffs also.
24      MR. BAUMANN:  John, or Jack, Baumann of
25  Quinn Emanuel for Ancestry and the witness, and with me
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2 (Pages 2 - 5)

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Page 6

1 today is Christina Henriquez, also Quinn Emanuel, as
2 well as Kathleen McCarthy, who is in-house counsel for
3 Ancestry.
4   VIDEOGRAPHER: The court reporter, Ann
5 Fleming, will swear in the witness and then counsel may
6 proceed.
7
8   TODD GODFREY,
9   called as a witness, being first sworn,
10   was examined and testified as follows:
11
12   EXAMINATION
13 BY MS. BORRELLI:
14   Q.   Good morning, Mr. Godfrey. As I said, my
15 name is Raina Borrelli and I represent the plaintiffs
16 in the action that we are here to talk about today.
17 Mr. Godfrey, have you ever had your deposition taken
18 before?
19   A.   No.
20   Q.   Well, welcome. I will make this as
21 painless as possible. I'd like to just cover some
22 ground rules before we get started to make today go
23 smoothly. First, as you can see, we have a court
24 reporter here taking down everything that we say. As a
25 result we need to be careful not to speak over one

Page 7

1 another, so I ask that you let me finish my question
2 before you provide your answer and I will do the same
3 for you, okay?
4   A.   Sure.
5   Q.   And non-verbal responses are difficult for
6 the court reporter to take down, so, please, no head
7 shakes or head nods. Also uh-huh's (affirmative) or
8 huh-uh's (negative) are difficult to record, so,
9 please, avoid those and try to give a verbal response,
10 okay?
11   A.   Okay.
12   Q.   If you don't understand a question that I
13 ask, please, ask me to rephrase, and I'm happy to do
14 that. Okay?
15   A.   Yes.
16   Q.   But if you answer the question that I've
17 asked you, I will assume that you understood the
18 question; is that fair?
19   A.   Yes.
20   Q.   Your attorney, Mr. Baumann, may object
21 from time to time today, but unless he instructs you
22 not to answer the question, after he finishes his
23 objection, you can go ahead and provide an answer.
24 Okay?
25   A.   Yes.

Page 8

1   Q.   Happy to take a break whenever you need
2 today. Just let me know. I usually tend to take
3 breaks every hour or so just to give us all a moment to
4 stretch, but if you ever need one before then, let me
5 know.
6   A.   Sounds good.
7   Q.   All right. You understand, Mr. Godfrey,
8 that you are under oath today, correct?
9   A.   I do.
10   Q.   And that's the same oath that you would
11 take if you were in court. Do you understand that?
12   A.   I do.
13   Q.   Is there anything that would prevent you
14 from testifying truthfully today?
15   A.   No.
16   Q.   And where are you located today,
17 Mr. Godfrey?
18   A.   I'm in the Ancestry offices in Lehi, Utah.
19   Q.   Okay. And is anyone else in the room with
20 you at the moment?
21   A.   Yeah, internal counsel, Kathleen McCarthy.
22   Q.   But no one else?
23   A.   No one else.
24   Q.   So do you understand that you have been
25 asked to testify on behalf of Ancestry today as what's

Page 9

1 called the Rule 30(b)(6) witness?
2   A.   I do.
3   Q.   And you understand that your answers to my
4 questions in your 30(b)(6) deposition will be as if
5 Ancestry is answering, correct?
6   A.   Yes.
7   Q.   Okay. And are you aware that you have
8 also been asked to appear individually as a witness,
9 just as Todd Godfrey, in this action?
10   A.   Yes.
11   Q.   Okay. And I just want to put on the
12 record before we get started, Mr. Baumann and I had a
13 conversation yesterday and we're going to do the
14 30(b)(6) deposition at the same time as your individual
15 deposition. So if there's ever a time that I've asked
16 you a question and you think you can't answer it on
17 behalf of Ancestry, but you have an answer as yourself,
18 Todd Godfrey, please, let me know.
19   MS. BORRELLI: And, Jack, as we discussed,
20 I think it's easiest that we agree you can go back and
21 stipulate or identify areas of the transcript that are
22 30(b)(1) rather than 30(b)(6) testimony after the fact,
23 but, obviously, feel free to make your objections as we
24 go today.
25   MR. BAUMANN: Yeah, I suspect there won't

3 (Pages 6 - 9)

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Page 10

1 be many, but that works fine.
2   MS. BORRELLI: Great. Then we can
3 hopefully get this done as expeditiously as possible.
4   Q.   Okay, Mr. Godfrey, do you have access to
5 the Exhibit Share website?
6   A.   I'm not sure that I do. I've got the
7 login for the Veritext site. Does that launch the
8 Exhibit Share?
9   Q.   It should have a link to Exhibit Share.
10 If not, we may have do go off the record and make sure
11 you have that. That's how I will be giving you
12 information today.
13   A.   Give me a moment to just get into it and
14 see. It is requesting a password that I don't know.
15   MS. BORRELLI: Okay. Can we go off the
16 record for just a minute, please.
17   VIDEOGRAPHER: The time now is 9:10 a.m.
18 We are off the record.
19   (Break)
20   VIDEOGRAPHER: The time now is 9:14 a.m.
21 We are back the record.
22   Q.   All right. Mr. Godfrey, I'm going to
23 introduce Exhibit Number 1.
24   (Exhibit 1 marked)
25   Q.   It should show up in your Exhibit Share in

Page 11

1 just a moment. Do you see Exhibit Number 1?
2   A.   I don't. Let me just refresh. Nothing
3 yet.
4   MR. BAUMANN: The folder, it will refresh
5 it so it pops up. That worked for me.
6   A.   I've checked both home and under files
7 shared and it refreshed and it says I don't have
8 permission to access any folder.
9   Q.   Okay. I will send exhibits via the chat
10 then, I suppose. We need to go off the record a
11 minute, please.
12   VIDEOGRAPHER: Time now is 9:17 a m. We
13 we are off the record.
14   (Break)
15   VIDEOGRAPHER: The time now is 9:19 a.m.
16 We are back on the record.
17   Q.   Okay. Mr. Godfrey, I'm gonna share my
18 screen and show you Exhibit Number 1, which is
19 Plaintiffs' Notice of Deposition Pursuant to Rule
20 30(b)(6). Can you see Exhibit 1, Mr. Godfrey?
21   A.   Yes, I can see looks like the first page
22 of the notice.
23   Q.   Have you seen this document before?
24   A.   I have.
25   Q.   All right. And I'm going to scroll down

Page 12

1 to the Exhibit A, which has a list of topics. Are you
2 prepared to testify about the topics identified in
3 Exhibit 1 today with the exception of number 7, which I
4 understand your counsel has objected to? I can scroll
5 through these, too, if that helps.
6   A.   Yes.
7   MR. BAUMANN: Sorry, for this purpose,
8 I'll just -- I think we can probably refer back to our
9 somewhat lengthy correspondence as to the scope the
10 topics which is set out fairly specifically there.
11   Q.   I can rephrase my question. So subject to
12 the agreements between counsel about the scope of these
13 requests, are you generally prepared to testify about
14 the topics identified in the 30(b)(6) notice today?
15   A.   Yes.
16   Q.   Okay. Mr. Godfrey, what did you do to
17 prepare for your 30(b)(6) deposition today?
18   A.   Discussed with counsel so I would be
19 familiar with some of the details of the case and
20 reviewed my own history with my own information with
21 respect to the scope of the case.
22   Q.   When you say you discussed with counsel,
23 who specifically did you meet with to prepare for this
24 deposition?
25   A.   Kathy McCarthy and Jack Baumann.

Page 13

1   Q.   Approximately how many times did you meet
2 with Ms. McCarthy and Mr. Baumann to prepare for your
3 deposition?
4   A.   Multiple times, maybe three or four.
5   Q.   Approximately how long was each of those
6 three or four meetings?
7   A.   Varied in length, but maybe a couple
8 hours.
9   Q.   Was anyone else ever present at those
10 meetings other than Ms. McCarthy and Mr. Baumann?
11   A.   No, not that I recall, no.
12   Q.   You said you also reviewed some of your
13 own information. What information did you review to
14 prepare for today?
15   A.   I reviewed the information shared in the
16 case, the notice, the responses and we provided and
17 some of the historical agreements around our yearbooks
18 project work.
19   Q.   Did you review any documents that you
20 don't believe have been produced to plaintiffs in this
21 case?
22   A.   I don't think so.
23   Q.   Did you speak with any other Ancestry
24 employees other than Ms. McCarthy to prepare for your
25 deposition today?

4 (Pages 10 - 13)

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Page 14

1   A. Yes.
2   Q. Who did you speak with?
3   A. I spoke with Quinton Atkinson.
4   Q. Can you spell that for the record, please?
5   A. Quinton, Q-U-I-N-T-O-N, at Atkinson,
6 A-T-K-I-N-S-O-N.
7   Q. And Mr. Atkinson is employed by Ancestry?
8   A. Yes, he is.
9   Q. What is his role in the company?
10   A. He is a senior director of content
11 acquisition.
12   Q. What does that mean as far as his job
13 duties?
14   A. He was involved in some of the work with
15 Classmates and other sources of yearbooks over the
16 years.
17   Q. For what purpose did you speak with Mr.
18 Atkinson?
19   MR. BAUMANN: Wait, I'm sorry, I'm just
20 going to interpose an objection just to caution
21 Mr. Godfrey, to the extent you and Mr. Atkinson
22 discussed information that had been given to you by
23 counsel, I would object to that as privileged and
24 instruct you not to respond to the extent you and Mr.
25 Atkinson discussed things that are unrelated to advice

Page 15

1 you received from me or Ms. McCarthy, you're free to
2 answer.
3   A. Related to the case, there is a lunch that
4 we didn't discuss with counsel.
5   Q. Okay. Were you speaking with him in order
6 to prepare -- to be prepared to testify about any of
7 the 30(b)(6) topics today?
8   A. To better understand the background in and
9 issues involved in the case.
10   Q. And were those issues limited to yearbook
11 acquisition, or did you discuss any other topics?
12   A. We have a working relationship, so we
13 speak every day, but relative to the case, it would be
14 the yearbooks.
15   Q. Okay. Did you speak with anyone else at
16 Ancestry other than Mr. Atkinson to prepare for your
17 deposition?
18   A. No.
19   Q. Beyond the information that you said you
20 reviewed, all of which you think has been produced to
21 the plaintiffs in this case, did you review any other
22 documents to prepare for today's deposition?
23   A. Yes.
24   Q. What else did you review?
25   A. Just some agreements from earlier that are

Page 16

1 earlier than the scope of the case.
2   Q. What sort of agreements?
3   A. We've been acquiring yearbooks for over a
4 decade and I was trying to understand the full history.
5   Q. Okay. Do you have any documents with you
6 today?
7   A. I don't.
8   Q. Mr. Godfrey, what is your job title?
9   A. Vice President of Global Content.
10   Q. How long have you held that position?
11   A. This specific position has been about
12 eight years.
13   Q. Who is your employer?
14   A. Ancestry.com.
15   Q. There are a number of Ancestry entities
16 called Ancestry.com. Do you know which specific entity
17 you are employed by?
18   A. It's Ancestry.Com Operations Inc.
19   Q. And if I'm going to refer to Ancestry
20 today, do you need me to be more specific than Ancestry
21 or Ancestry.com, given that there are a number of
22 defendants in this case: Ancestry.Com Operations Inc.,
23 Ancestry.Com Inc. and Ancestry.Com LLC?
24   A. I'd defer to counsel on what makes the
25 most sense.

Page 17

1   Q. I just want to make sure you and I are
2 speaking the same language. If I say Ancestry, I think
3 you know what I mean, right?
4   A. I do. I do. If you're talking generally
5 about the company and the content job function that I'm
6 responsible for, I understand that.
7   Q. And as the Vice President of Global
8 Content, what are your job responsibilities?
9   A. Generally bringing records to the Ancestry
10 website and our users, so I'm responsible for
11 acquisition of records, so working with archives to
12 license them, the digitization work that we do to scan
13 and transcribe the records and publishing them to the
14 website.
15   Q. In your role as VP of Global Content, do
16 you have any direct reports?
17   A. I do.
18   Q. Who reports to you and what are their
19 roles?
20   A. Key reports includes Quinton Atkinson, who
21 leads our content acquisition function. I have two
22 individuals that lead digitization for us: Jeffrey
23 Heeps and Trevor Lucas, and they're responsible for
24 scanning and transcription and the publishing of the
25 contents of them.

5 (Pages 14 - 17)

CONFIDENTIAL

Page 18

1   Q.   Who do you report to?
2   A.   I report to Howard Hochhauser.
3   Q.   What is Mr. Hochhauser's role?
4   A.   He's the CO of the company.
5   Q.   And could you spell his name for the
6 record?
7   A.   I can try. Howard, Hochhauser, I think
8 it's H-O-C-H-H-A-U-S-E-R.
9   Q.   All right. We won't tell anyone if you
10 don't know how to spell your boss' name.
11   A.   I just know --
12   Q.   Prior to your role as VP of Global
13 Content, were you employed by Ancestry?
14   A.   I was.
15   Q.   What was your prior role?
16   A.   Other roles within content so was
17 responsible for acquisition for a time and prior to
18 getting involved in content, I worked on the products
19 side.
20   Q.   And when you say worked on the products
21 side, what does that mean?
22   A.   I was building, trying out some new
23 products for Ancestry when I originally joined the
24 company.
25   Q.   When did you first join Ancestry?

Page 19

1   A.   2008.
2   Q.   Do you know when the Ancestry.com website
3 first existed on the internet?
4   A.   I should, but, I'm sorry, I don't have
5 that date.
6   Q.   Before 2008, though?
7   A.   Long before, yes.
8   Q.   Okay. Do you know when yearbooks were
9 first available on the Ancestry.com website?
10   A.   I don't have the date when we first
11 published a yearbook.
12   Q.   Do you have an approximate timeframe?
13   A.   I think in small early collections, it
14 could have been around 2007-2008 timeframe.
15   Q.   Prior to joining Ancestry in 2008, where
16 were you employed?
17   A.   I owned my own business for a few years.
18   Q.   What type of business did you own?
19   A.   It was a healthcare business.
20   Q.   Prior to joining Ancestry, had you ever
21 worked for a company that provided any services similar
22 to Ancestry.com?
23   A.   No. No.
24   Q.   Okay. As we talk today, I just want to go
25 through a little bit of terminology, again, to make

Page 20

1 sure we're speaking the same language. So if I refer
2 to paying subscribers, I intend that to mean people who
3 have purchased a subscription plan with Ancestry.com;
4 is that a fair term?
5   A.   Yes.
6   Q.   Is there something else that Ancestry
7 calls those people?
8   A.   Just to distinct -- no, that's actually
9 the term.
10   Q.   Subscribers?
11   A.   Yeah.
12   Q.   Look at me, like I have an inside view.
13 All right. If I am referring -- if I say free trial
14 subscribers or free trial users, I mean people who have
15 signed up for a free trial on Ancestry; is that fair
16 terminology?
17   A.   Yes.
18   Q.   Is there any other term that Ancestry
19 would use to refer to those, those people?
20   A.   That is the main term used for that group.
21   Q.   And then, if I say users of Ancestry, I
22 intend to mean people who have visited Ancestry.com but
23 have not signed up to a free trial or a paid
24 subscription; is that fair?
25   A.   I think for clarity, users is a broad term

Page 21

1 that captures everyone. We refer to people who have --
2 to people who have come to the website but are not yet
3 -- are not currently subscribed but have registered as
4 registered users.
5   Q.   And when you say registered, what does
6 that mean as opposed to free trial users?
7   A.   That they have registered with -- they
8 have registered an account with Ancestry.
9   Q.   And what services are provided to a
10 registered account?
11   A.   An example is starting your own family
12 tree.
13   Q.   So is it fair to say that there's a
14 limited subset of information that's available to
15 registered users even if they have not signed up for a
16 free trial or a paid subscription?
17   A.   I think there's a limited set of services
18 that they can explore as a registered user and family
19 tree is the primary example.
20   Q.   Can registered users search Ancestry's
21 yearbook content?
22   A.   They can perform a search on the
23 collection.
24   Q.   Can they view any search results?
25   A.   They can view limited information but not

6 (Pages 18 - 21)

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Page 22

1 the full record.
2   Q.   To become a registered user, does a person
3 who provides -- does that person who registers have to
4 agree to the Ancestry.com terms of service?
5   A.   Yes, they do.
6   Q.   So I will refer to that group as
7 registered users. For people who visit Ancestry.com
8 but do not register in any way, can we call them
9 visitors? What's a good word to use for that group?
10   A.   For this purpose, visitor is fine.
11   Q.   Okay. Then what services are available to
12 free trial subscribers that are not available to
13 registered users?
14   A.   Free trial, can you clarify free trial
15 versus registered?
16   Q.   My understanding is you can sign up for a
17 free trial of the Ancestry services. Is that different
18 than a registered user?
19   A.   No, understood. I just wanted to clarify
20 the groups you were talking about.
21   Q.   Yeah.
22   A.   So free trials, free trial users can
23 access the full services within the geographic scope of
24 the package that they are trialing for, so, for
25 example, in the, let's say, U.S. package, records in

Page 23

1 the U.S., full tree building, collaboration, tools to
2 enhance and modify personal photographs and general
3 collaboration with their cousins on the website.
4   Q.   How long does a free trial last time-wise?
5   A.   Typically 14 days. That's been our
6 standard.
7   Q.   And then paying subscribers have access to
8 whatever services are included in the package that they
9 have purchased; is that right?
10   A.   That's right.
11   Q.   Okay. So let's dive into Topic Number 1,
12 which is the cooperate structure of Ancestry,
13 including, but not limited to, your organizational
14 structure and the identities of your executives and
15 managers. Does -- let me ask it this way: What
16 websites does Ancestry own and operate?
17   A.   To clarify, which company? Or do you mean
18 the parent?
19   Q.   The parent.
20   A.   There's several. There's Ancestry.com,
21 there's a Fold3.com
22   Q.   I'm sorry, can you repeat that?
23   A.   A Fold3, fold, the number 3.com. There's
24 Newspapers with an S.com. There is Archives.com,
25 Geneanet fr, a French website and

Page 24

1 Forces4Records.codeIUK.
2   Q.   Do any of those websites other than
3 Ancestry.com provide access to yearbook records?
4   A.   No.
5   Q.   So we can limit our discussion today to
6 Ancestry.com, I think, unless you say otherwise, okay?
7   A.   Okay.
8   Q.   Is there a specific team of employees at
9 the Ancestry company that's responsible for the
10 Ancestry.com website?
11   A.   There are many teams.
12   Q.   So I'm just trying to understand, at
13 Ancestry do -- do people that work at the parent
14 company manage all of the websites that you just
15 listed, or is there a group that's focused specifically
16 on Ancestry.com?
17   A.   The majority of employees are focused on
18 Ancestry.com and there are teams and employees that
19 look after and manage the other websites and brands as
20 well.
21   Q.   Is there any team or subset of Ancestry
22 employees that have responsibility for Ancestry.com's
23 yearbook database?
24   A.   No. That's not how we're organized.
25   Q.   Okay. Can you explain how Ancestry is

Page 25

1 organized at a really high level?
2   A.   Yes. There's a team that's responsible
3 for gathering records, which is, of course, my team,
4 the team that I lead, of all types. There's a product
5 and technology organization that's responsible for the
6 main functionality of the service. There's -- and then
7 there's a marketing organization that's responsible for
8 helping people attract people to that service and
9 helping them understand what can be discovered, they
10 do. Those are the primary organizations that will be
11 involved.
12   Q.   Is there a finance --
13   A.   Yes.
14   Q.   -- team. And that covers all of the
15 websites that Ancestry owns?
16   A.   That's right.
17   Q.   And I assume there's also HR?
18   A.   HR, yes.
19   Q.   And, again, that would cover everything?
20   A.   That's right.
21   Q.   Okay. And is there a Legal or Compliance
22 Department?
23   A.   Yes, there is.
24   Q.   Does that have responsibility for all of
25 the websites that you've identified?

7 (Pages 22 - 25)

CONFIDENTIAL

Page 26

1   A.   Yes.
2   Q.   Okay. Of those kind of overarching
3 organizations, which is responsible for the yearbook
4 search functionality on Ancestry.com?
5   A.   The overall search functionality for any
6 record is managed by the product and technology team.
7   Q.   Who at Ancestry is at the top of that
8 product and technology organization?
9   A.   There are two senior leaders: Heather
10 Freeland, responsible for the product organization and
11 Sriram Thiagarajan is responsible for the technology
12 organization.
13   Q.   Any chance you could spell that second one
14 for sure? The court reporter will ask you later if I
15 don't now.
16   A.   Sriram is S-R-I-R-A-M and I would have to
17 look up the spelling of his last name.
18   Q.   Okay.
19   A.   But a dear friend at the same time.
20   Q.   So that product and technology team is
21 responsible for how the search functionality of the
22 Ancestry.com website works, including the yearbook
23 search function, correct?
24   A.   Yes.
25   Q.   And then the marketing group, do they have

Page 27

1 involvement in how Ancestry promotes subscriptions to
2 its website?
3   A.   Yes.
4   Q.   Who leads that marketing organization?
5   A.   Our chief marketing officer is Todd
6 Pollak. Pollak is P-O-L-L-A-K.
7   Q.   Do you know if there's anyone within the
8 marketing organization that has any specific
9 responsibility with respect to how the yearbook records
10 can be used to promote Ancestry subscriptions?
11   A.   Nobody specific to yearbooks, but each of
12 the teams within marketing, through their various
13 channels, are responsible for marketing all the types
14 of discoveries that you can make, which include
15 yearbooks.
16   Q.   I should go back and ask that for product
17 and technology, too. Is there anyone on that team that
18 has specific responsibility with respect to the search
19 functionality in the yearbook database?
20   A.   Very similar answer, no, they're focused
21 on any kind of all of the records not specific to
22 yearbooks. No one specific to yearbooks.
23   Q.   And within your team and organization is
24 there someone responsible for obtaining yearbooks to
25 add to the Ancestry database?

Page 28

1   A.   Yearbooks are one of the many record
2 categories that Quinton Atkinson's content acquisition
3 team is responsible for working to acquire.
4   Q.   And ever since you've been the VP of
5 global content over the last eight years, has that
6 yearbook acquisition function fallen under your
7 organizational structure?
8   A.   Yes.
9   Q.   Then the Finance Department, who leads
10 that, that organization?
11   A.   Howard Hochhauser is also our CFO and, so,
12 he leads that organization.
13   Q.   And to your knowledge, does the Finance
14 Department track Ancestry's revenue related to
15 subscriptions?
16   A.   Yes.
17   Q.   Does Ancestry license any of its yearbook
18 content to third parties?
19   A.   No.
20   Q.   I'm gonna move on to topics 2 and 3.
21 Topic 2 is an overview of Ancestry's financial model,
22 including, but not limited to, operating activities and
23 cash inflows and outflows. Topic 3 is Ancestry's
24 revenue derived from the sale of website subscription
25 to Ancestry.com. Does Ancestry track its revenue for

Page 29

1 Ancestry.com separately from revenue for its other
2 websites that you identified?
3   A.   Yes, we do.
4   Q.   Does Ancestry have any way to track
5 revenue associated with subscriptions purchased after
6 searching the yearbook database differently from any
7 other areas of the website?
8   A.   Can you restate the question?
9   Q.   That wasn't a great question. Let me try
10 again. Does Ancestry track revenue associated with
11 subscriptions purchased after a person conducts a
12 yearbook search separately from revenue associated with
13 subscriptions purchased when someone has not looked at
14 the yearbook portion of the website?
15   A.   No, we don't track that.
16   Q.   Okay. Does Ancestry track expenses for
17 Ancestry.com separately from its other websites?
18   A.   Yes, we do.
19   Q.   What sources of revenue are associated
20 with Ancestry.com?
21   A.   The primary sources would include the
22 subscriptions to the genealogy side of the service and
23 the other main category are the sale of DNA kits and,
24 which, obviously, enhance the genealogy experience as
25 well.

8 (Pages 26 - 29)

CONFIDENTIAL

Page 30

1   Q.   When you say subscriptions to the
2 genealogy side, does that include access to yearbook
3 records?
4   A.   Yes, subscriptions provide access to all
5 the records within the scope of the subscription,
6 working, interacting with other users, family trees in
7 collaboration services.
8   Q.   Then DNA kits is kind of a separate type
9 of business?
10   A.   It's a complimentary business, but, yes,
11 it's a separate, it's a separate purchase from the
12 subscription.
13   Q.   Are there any other sources of revenue
14 associated with Ancestry.com other than those two
15 items?
16   A.   Directly with the website with that
17 website, no, it would be the other brands that we
18 discussed.
19   Q.   Does Ancestry make any revenue from
20 advertisements on its website?
21   A.   No, not on the Ancestry.com website.
22   Q.   So does Ancestry track the revenue from
23 subscriptions to the genealogy side of the website?
24   A.   We do.
25   Q.   Does Ancestry do any analysis of that

Page 31

1 revenue to look at what portions of its genealogy
2 search side drive that subscription revenue?
3   A.   Could you restate the question?
4   ■

Page 32

1 [redacted]

Page 33

1 [redacted]

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Page 34

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4   Q. Okay. But I think you would agree that

5 Ancestry earns revenue in part from selling

6 subscriptions to Ancestry.com that provide access to a

7 yearbook search functionality, correct?

8   A. That yearbook search functionality and

9 discovery is the part of the service that drives

10 revenue, yes.

11   Q. And the yearbook search functionality

12 includes yearbooks from Nevada, correct?

13   A. Yes.

14   Q. So you would agree that some set of the

15 yearbook photographs available on Ancestry.com portray

16 people who are residents of Nevada?

17   A. We -- it portrays photos of people who are

18 living in Nevada at the time of the record, at the time

19 of the yearbook, but we don't know whether they're

20 still there.

21   Q. Fair, but you would agree that

22 statistically speaking there are certainly people

23 portrayed in the yearbook database who currently live

24 in Nevada, right?

25   A. Yes.

Page 35

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Page 36

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6   Q. All right. I'm going to move on to topic

7 4 and topic 8, which are related. Topic 4 is the

8 structure and operation of Ancestry's marketing and

9 advertising of its subscription products that

10 incorporate yearbook names and/or yearbook photographs.

11 And topic 8 is the purpose for which Ancestry uses

12 marketing emails and on-site messages that incorporate

13 yearbook names and/or yearbook photographs, including

14 their value in attracting paying subscribers to

15 Ancestry.com.

16   MR. BAUMANN: -- topics. We've been going

17 like an hour. Would this be a good time to take like a

18 five-minute break?

19   MS. BORRELLI: Yeah, that's fine. I'll

20 warm up my coffee. Let's go off the record.

21   VIDEOGRAPHER: The time now is 10 a m. We

22 are off the record.

23   (Break)

24   VIDEOGRAPHER: The time now is 10:20 a m.

25 We are back on the record.

Page 37

1   Q. Okay, Mr. Godfrey, we are now going to

2 start talking about topics 4 and 8, which I identified

3 on the record before our break. All right. Is there a

4 public landing page for Ancestry.com?

5   A. There is.

6   Q. Would you agree that anyone using the

7 internet can access that public landing page?

8   A. Yes.

9   Q. From that public landing page, how can a

10 visitor to Ancestry.com access the yearbook records

11 search?

12   A. They can click on the search button, which

13 would then take them to all the records, all the

14 collections that can be searched and with some

15 filtering down, they can find the specific yearbook

16 record collection.

17   Q. So the Ancestry.com website has kind of a

18 main search page that allows the user to search all the

19 records available on the website?

20   A. Yes.

21   Q. Is there a specific search page for only

22 searching yearbooks that's accessible?

23   A. There is.

24   Q. And how -- sorry. How would a visitor to

25 the Ancestry.com website navigate to that yearbook

10 (Pages 34 - 37)

CONFIDENTIAL

Page 38

1 specific search?
2   A.   They would have to know about that page
3 specifically or have a link to that page specifically
4 to get to that specific page, but they could also
5 filter in what we say global search, searching all the
6 records, they can filter down by category and find,
7 locate the individual yearbook database to search.
8   Q.   And why does Ancestry offer a public
9 landing page for its website?
10   A.   To help visitors understand what type of
11 services Ancestry has to offer.
12   Q.   And why does Ancestry offer a public
13 search page where any visitor to the website can search
14 Ancestry's records?
15   A.   One of the reasons is because it helps
16 them understand what types of, we say discoveries, but
17 records, stories they can potentially find on the
18 service if they subscribe to the services.
19   Q.   So is it fair to say it's intended to give
20 visitors a preview of what's available on Ancestry.com
21 for paying subscribers?
22   A.   Yes.
23   Q.   Do you know what percentage of
24 subscription purchases are made after a visitor
25 performs a search for someone on the publicly available

Page 39

1 landing page?
2   A.   I don't have that information.
3   Q.   Is that information that's knowable from
4 data that Ancestry keeps?
5   A.   Possibly, but I'm not aware for sure.
6   Q.   If you want to know if that information
7 existed, who would you ask or where would you look?
8   A.   I would work with one of our technology
9 team members to understand what they're tracking
10 relative to each page.
11   Q.   Can a search of Ancestry's yearbook
12 records be accessed any other way other than what we've
13 talked about via the main search page or, you know, the
14 specific link to the yearbook search page?
15   A.   Those are the two primary ways to search
16 the collection, yes.
17   Q.   What are categories of subscription
18 products that Ancestry offers?
19   A.   We -- they are typically geographically
20 placed so we have a product that offer the family
21 history services, the collaboration services, tree
22 building services and the records related to -- records
23 that are in the United States, as a package, and then
24 we have a world package, basically all records that we
25 have for any part of the world. Those are the two main

Page 40

1 packages, package options for Ancestry.com.
2   Q.   Backing up for a moment to how searches of
3 the yearbook database can be conducted -- or the
4 yearbook collection, the process, the two processes you
5 described, either searching via public main search page
6 or if you have a link to the yearbook database, has
7 that been true for the entire time that you've been at
8 Ancestry or has there ever been any different way to
9 search the yearbook collection?
10   A.   I'm not aware of any other way to search
11 the yearbook collection and, ultimately, they're
12 searching it the same way. It's the -- there's only
13 one search function, but you can search all records
14 globally or you can focus on a particular collection,
15 which both of those options we have a path to.
16   Q.   And the categories of subscription
17 products you just identified, have those changed over
18 time? Have there ever been different categories of
19 subscriptions?
20   A.   Over the last decade or more, they've
21 always been geographically based like that.
22   Q.   And those subscriptions, are they monthly
23 or annually or on some other schedule?
24   A.   Yes.
25   Q.   All of the above?

Page 41

1   A.   There are options for a monthly
2 subscription, for annual and semiannual subscriptions
3 as well.
4   Q.   And would you agree that the two
5 categories of subscription of products you identified
6 offer access to the yearbook collection?
7   A.   Yes, both the U.S. subscription and the
8 world subscription include that collection.
9   Q.   Is there also something called an all
10 access subscription?
11   A.   Uh-huh (affirmative).
12   Q.   How is that different than the other two?
13   A.   The all access subscription is the --
14 takes the world subscription and adds access to other
15 brands, the Newspapers.com website for the newspapers
16 or Fold3.com, which is the military focus website.
17   Q.   Okay. Does Ancestry promote or advertise
18 its subscription products on Ancestry.com?
19   A.   We . . . Could you restate the question?
20   Q.   Yeah, does Ancestry advertise or promote
21 its subscription products on its website Ancestry.com?
22   A.   On the website itself, there is marketing
23 on the website to help you understand what's available
24 and the types of discoveries that you can make, yes, as
25 well as an explanation clearly on the homepage, for

11 (Pages 38 - 41)

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Page 42

1 example, again, helping orient users to what we have to
2 offer.
3   Q.   And where on the website is that marketing
4 done?
5   A.   The main web page is -- the homepage is
6 for users who are not signed in is the predominant
7 place where that's done.
8   Q.   How is it done for registered users on the
9 website?
10   A.   There are occasions where we might use a
11 banner, for example, above the page to help them know
12 of a new collection that's available to them or make
13 them aware of a new product or service that we're
14 offering, but for the most part for ones logged in our
15 focus is on the tools you need to do the research and
16 that's where the screen space goes to and is dedicated.
17   Q.   What about for free trial users who are
18 logged in; is there a different way that the
19 subscription products are promoted to them on the
20 website?
21   A.   A free trial user's experience is very
22 similar to a subscribed user's experience. Not aware
23 of any material difference in their kind of experience
24 on the site with respect to that.
25   Q.   Okay. Do you know if Ancestry uses

Page 43

1 pop-up's on its website for any user to promote
2 subscription products?
3   A.   I'm not aware recently of much use of
4 pop-up's, but, yeah, not aware of that.
5   Q.   Were they used in the past?
6   A.   I'm sure at some point years ago, but
7 they're not a prominent part of the service now -- or
8 the website now.
9   Q.   Does Ancestry maintain records showing how
10 its website operated in the past?
11   A.   Likely. I don't, I don't have a lot of
12 information about that, though.
13   Q.   You indicated that for registered users
14 the website might show a banner promoting the
15 subscription products. Do you know where that banner
16 would appear for a registered user?
17   A.   I would clarify banners are most often
18 used to help users understand new discoveries that are
19 possible or new product features that have been added
20 to the service, but we don't do a lot of traditional
21 banner advertising, if you will, as other companies do
22 on the Ancestry service. It's fairly clean and focused
23 on what you can discover and the tools that you're
24 using to try to explore your own family history.
25   Q.   To use --

Page 44

1   A.   Sorry, go ahead.
2   Q.   To use those new features or tools that
3 may be promoted via a banner ad, would a registered
4 user need to have a subscription?
5   A.   Sometimes. Sometimes. They could also be
6 promoting, for example, new features of building your
7 own family tree, which any user can do for free, but
8 highlighting some new feature or a way of which we've
9 made that more efficient for the user. They're more
10 akin to product tutorials or awareness of new features.
11   Q.   But you would agree that most of the
12 features on Ancestry.com require a subscription to
13 access in any meaningful way?
14   A.   Most, most of the features are part of the
15 subscription package.
16   Q.   On the Ancestry website does Ancestry
17 redirect users -- I use the word visitors. Does
18 Ancestry redirect visitors to a page about
19 subscriptions at any point?
20   A.   Can you clarify what you mean by redirect?
21   Q.   Sure. So if someone searches -- let's say
22 a visitor who doesn't, hasn't purchased anything,
23 hasn't registered isn't a pretrial user, conducts a
24 search for a name and filters for yearbook records, if
25 they try to click on that yearbook record, is there any

Page 45

1 redirection to another page with information about
2 subscriptions?
3   A.   Well, the purpose of the search page is to
4 help them understand what records we potentially have
5 that may match their search. However, those, accessing
6 those records is part of the subscription and, so, at
7 that point, we're helping them understand what their
8 subscription options are to view the record.
9   Q.   Okay. So what is the purpose of showing
10 those search results to visitors if they can't access
11 them?
12   A.   To help them get a sense for the potential
13 for records that they're interested in and whether or
14 not they may be on the site.
15   Q.   Okay. But then to access those records,
16 they would need to purchase a subscription?
17   A.   Yes, in most cases, yes.
18   Q.   Okay. I think you testified that any
19 visitor to Ancestry.com can conduct a search within the
20 yearbook collection, regardless of whether they've
21 registered or haven't signed up for a free trial or are
22 a subscriber, correct?
23   A.   Correct.
24   Q.   Would you agree that nonregistered
25 visitors to the website can conduct a search without

12 (Pages 42 - 45)

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Page 46

1 agreeing to Ancestry's terms of service?
2   A.   I think --
3   MR. BAUMANN: Sorry, I'll just object to
4 the extent it calls for a legal conclusion, but
5 otherwise you're free to answer.
6   A.   I was just thinking through the
7 nonregistered experience. A nonregistered user can
8 perform a search and see some element of search result
9 but can't move further without -- to view records
10 without a subscription and agreeing to terms of
11 service.
12   Q.   But they could conduct the initial search
13 and see the search results, correct?
14   A.   They could conduct an initial search and
15 get a sense for the types of records that are there.
16   Q.   Okay. Does the appearance of the search
17 results page when a search is conducted look different
18 for a nonregistered visitor than it would for a
19 registered user or a free trial user or subscriber?
20   A.   The difference in the search result list
21 are the fields of information that are available versus
22 muted and they are available similarly for free
23 trialists and subscribers but not available for
24 visitors or nonregistered's.
25   Q.   So if a visitor conducted a search within

Page 47

1 the yearbook collection for a specific name, would the
2 search results include a preview of a yearbook
3 photograph?
4   A.   We don't include a preview of the yearbook
5 photograph, but we do include a thumbnail size, small
6 image size of the page.
7   Q.   So it's very small?
8   A.   Yes. Again, our intention is to help the
9 user to understand there is indeed something there, but
10 they would need to subscribe in order to, obviously,
11 access the full image and see it in any detail.
12   Q.   Right. Would the same be true if a
13 registered user conducted a search of the yearbook
14 collection?
15   A.   Yeah, their experience is the same.
16   Q.   Okay. So just so I don't have to keep
17 asking then, the experience on the website is the same
18 for a visitor and a registered user with respect to
19 searching; is that correct?
20   A.   With respect to that search, yes.
21   Q.   Okay. And then the experience for a free
22 trial user and a paid subscriber is the same with
23 respect to the search functionality for yearbooks,
24 correct?
25   A.   Yes, yes, for the package that they're

Page 48

1 either subscribed or have free trialed into, but a free
2 trial user has the same access as a subscriber would or
3 same experience as a subscriber would for that package.
4   Q.   So for a visitor or a registered user,
5 what happens if they try to click on that thumbnail
6 image returned in a yearbook search and look at a
7 larger version of that photo?
8   A.   We share with them the options to
9 subscribe to the service to be able to access that and
10 other records and parts of the service.
11   Q.   So is it a pop-up or a redirect to another
12 page with that information?
13   A.   If they click on the -- if they click on
14 that thumbnail or the record itself, the next page we
15 show them is that page that describes the subscription
16 options.
17   Q.   Is there a hover over-type option that
18 shows some information to the visitor?
19   A.   Yes, if you're looking at the search
20 results and you hover over one of the possible results
21 there, there are places on that row where you can hover
22 over and that's where the thumbnail appears and some
23 description of the other fields of information that may
24 be included in that record so, again, so the user
25 understands what's -- what possible information they

Page 49

1 could discover.
2   Q.   Does that hover over contain any
3 information about subscription products?
4   A.   I don't think so. It may just speak to
5 the subscription itself.
6   Q.   What do you mean?
7   A.   I'm just trying to recall whether it says
8 anything else, but I think the focus is the thumbnail
9 and the list of the fields, date, place are examples of
10 fields to help you understand, to help the user
11 understand what else is in that record when they have
12 access to it.
13   Q.   So has that chain of events or the
14 availability of access to a larger photo in search
15 records for free -- I'm sorry, for visitors and
16 registered users changed over time? Has it ever been
17 different?
18   A.   Just can I ask you to kind of clarify that
19 again?
20   Q.   So you described -- we discussed first
21 that if the visitor clicked on the thumbnail
22 photograph, they would be redirected to a page with
23 subscription options, correct?
24   A.   Yes.
25   MR. BAUMANN: Object to the extent it

13 (Pages 46 - 49)

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Page 50

1 misstates the prior testimony.
2   Q.   Has that flow ever been different when
3 clicking on a photo in the yearbook search results?
4   A.   I think we've been consistent in the hover
5 possibility or the hover option and what that click
6 leads to.
7   Q.   Okay. If a free trial user conducts a
8 search for a yearbook record, I think you may have said
9 this, but remind me, what does the search result page
10 look like for that free trial user?
11   A.   It's the same as for a paid subscriber,
12 which is they see all the fields of information that we
13 make available on the search page and they see the
14 thumbnail as well if they hover over the record.
15   Q.   And, if a free trial user clicks on that
16 thumbnail, can they view the full photo?
17   A.   Yes, they can because they've already
18 selected a subscription package, provided, of course,
19 the yearbooks are available in their package that they
20 selected.
21   Q.   So there's no redirect to a page with the
22 paid subscription options; is that right?
23   A.   For a free trial -- for a person that's in
24 their free trial, we do not need to send them to
25 subscription option page before showing them the record

Page 51

1 because they've already, they've already made a
2 decision on that page in the past and selected a
3 package.
4   Q.   Okay. The free trial users automatically
5 become enrolled in a paid subscription if they don't
6 affirmatively opt out of that after the 14-day period?
7   A.   Yes.
8   Q.   Does Ancestry send hint emails to any of
9 its users?
10   A.   We do send hint emails to users.
11   Q.   And which categories of users would
12 receive hint emails?
13   A.   Hint emails are -- the purpose of a hint
14 email is to make the user aware of records that match
15 names that they have added to their personal tree. So
16 people that they've indicated to us that they're
17 looking for, they're searching records for and, so, any
18 user who has created a family tree and added family
19 member names to the tree, we have the potential to
20 receive a hint email, which indicates some possible
21 matching records for that ancestor in the tree, and
22 that includes registered users who have a tree and that
23 includes, of course, subscribers and free trials.
24   Q.   Do those hint emails ever include yearbook
25 records?

Page 52

1   A.   Yes, they do.
2   Q.   Under what circumstances would they
3 include yearbook records?
4   A.   As we -- for any given ancestor's name in
5 a tree that we look across the site to find the best
6 possible matches to suggest, to the extent a yearbook
7 record is a good match, a good potential match, then it
8 could be included in those emails.
9   Q.   So is the only way a record gets put in a
10 hint email if, is if a user has put a name on its
11 family tree that may match some records in Ancestry's
12 collection?
13   A.   That's correct.
14   Q.   Has that been the case from 2016 to the
15 present?
16   A.   Yes, it has.
17   Q.   What about prior to 2016?
18   A.   Yes, it has.
19

Page 53

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Page 54

1 [redacted]

(lines 2–25 redacted)

Page 55

1 [redacted]

(lines 2–24 redacted)

25   Q.   Okay. Let's go off the record for one

Page 56

1 minute. We're gonna try Exhibit Share one more time.
2 I've been told you've received another email. So we'll
3 go off the record for just a second.
4   A.   No problem.
5   VIDEOGRAPHER: Right now is 10:53 a m. We
6 are off the record.
7   (Discussion off the record)
8   VIDEOGRAPHER: The time now is 10:54 a m.
9 We are back on the record.
10   Q.   Okay, Mr. Godfrey, I'm going to introduce
11 Exhibit Number 2.
12   (Exhibit 2 marked)
13   Q.   I will share my screen in just a moment.
14 Sharing this Exhibit 2 the Class Action Complaint in
15 this case, Sessa versus Ancestry, have you ever seen
16 Exhibit 2 before, Mr. Godfrey?
17   A.   I probably have.
18   Q.   All right.
19   A.   Sorry, there's so many pages.
20   Q.   Yes, there are, yes. I can represent to
21 you this is the complaint in this case. I just want to
22 talk to you about some screenshots of Ancestry website
23 that are pictured in this complaint so I will scroll
24 down to those, but if there's any other portion of this
25 document that you'd like to review or look at, please,

Page 57

1 just let me know.
2   A.   I understand. Thank you.
3   Q.   All right. So I'm gonna start looking at
4 these screenshots that start right after paragraph 27.
5 If you'd like, please, read paragraph 27 so you know
6 what we're representing these screenshots are in the
7 complaint. And do you need me to make this bigger?
8   A.   You can go a little wider, sure, on the
9 screen, that would be great. Thank you, that's
10 helpful. Give me just a moment. Probably the question
11 that comes to mind in the screenshots is this -- are
12 these taken by a subscribed or free trial user account
13 or just as a registered user or visitor?
14   Q.   I don't know the answer to that, but once
15 you look at the screenshots you can tell me if you
16 think they go one or the other way or if you don't
17 know.
18   A.   Got it. Thank you.
19   Q.   All right. So I'm gonna scroll down to
20 the first screenshot here. Can you tell by looking at
21 this first screenshot on page 9 of Exhibit 2 whether
22 this was a free trial user or registered user or just a
23 visitor?
24   A.   I can't tell for sure, but given that the
25 full record is available, my assumption it's a free

15 (Pages 54 - 57)

CONFIDENTIAL

Page 58

1 trial or subscriber with access.
2   Q.   Okay. Does this screenshot that we're
3 looking at at the top of page 9 appear to be an
4 accurate representation of what a free trial user would
5 view upon searching the yearbook records of Ancestry?
6   A.   Yes, it does.
7   Q.   Okay. I'm gonna scroll to the next one.
8 So this is the screenshot on the bottom of page 9 of
9 Exhibit 2. Appears to be what you would view if you
10 clicked on the records to view it; is that fair?
11   A.   Yes, that's what it appears to be.
12   Q.   Okay. And do you see at the top of the
13 screenshot where my mouse is hovering over, it says
14 upgrade?
15   A.   I do.
16   Q.   What is that, the purpose of that button
17 on this Ancestry search result screen?
18   A.   As we described, there are different
19 levels of packages: The U.S. package, for example, if
20 you were based in the United States as a user; the
21 world package; the all access package. That button is
22 usually a reminder of other options for other packages
23 beyond the current package that you have.
24   Q.   Okay. What if the free trial user that
25 was looking at a search result already had a world

Page 59

1 package, would that upgrade button still appear?
2   A.   It would because there's still the all
3 access package available as an option, for example.
4   Q.   If the free trial user had the all access
5 package, would that upgrade button still appear?
6   A.   It's unlikely that button would appear.
7 That's an upgrade possibility, but it may, it may be
8 used to speak to another service such as the DNA
9 service, as an example.
10   Q.   Okay. But you don't think that clicking
11 on this upgrade button would prompt a free trial user
12 to purchase or to continue their subscription?
13   A.   Can you restate that question?
14   Q.   Yeah. Would clicking on the upgrade
15 button ever prompt the free trial user to continue to a
16 subscription beyond the free trial period?
17   A.   I don't think it would, I don't think it
18 would affect the package that they are in free trial
19 for, no.
20   Q.   And scrolling down to page 10 on Exhibit
21 2, this appears to be another full record that is
22 available; is that correct?
23   A.   It does. That's what it appears, yes.
24   Q.   Okay. And then on the bottom of page 10,
25 does that appear to be another full record that would

Page 60

1 be available to a free trial or a subscriber?
2   A.   It does.
3   Q.   Now, I'm gonna look at a few more
4 screenshots. I'll have you read paragraph 31, which
5 describes the screenshots that follow.
6   A.   Thank you. Okay.
7   Q.   All right. So there's a screenshot at the
8 top, the only screenshot on page 12. What sort of user
9 would see the type of screenshot -- the type of search
10 results shown in this screenshot on page 12?
11   A.   Because some of the fields information are
12 not available, I would imagine this is a registered
13 user or a visitor to the site who does not have a
14 subscription yet.
15   Q.   And do you see this button at the top
16 right that says subscribe?
17   A.   I do.
18   Q.   If you click on that button, where does
19 that take the user?
20   A.   Pretty, I'm pretty certain that would take
21 you to the page that describes the subscription options
22 for the genealogy product, the packages that we've just
23 been discussing.
24   Q.   From 2016 to the present has the Ancestry
25 website always had the subscribe button on the search

Page 61

1 results page for visitors or nonregistered users -- or
2 registered users, I'm sorry?
3   A.   Yeah, although the general layout of the
4 site has probably evolved over that period of time, I,
5 I'm fairly confident there's always been a path around
6 option to view the subscription options on the page.
7   Q.   I'm gonna scroll down to page 13. There's
8 another screenshot at the top of page 13. Is that what
9 would appear if you hovered over the picture or link to
10 view more?
11   A.   Yes, although it looks -- yes, it looks a
12 little different in the screenshot from I think the
13 current experience, but yes. The layout, yes.
14   Q.   What does the current experience look
15 like?
16   A.   This seems to cover the entirety of the
17 screen. I'm not sure if that's the experience on the
18 service itself when you hover.
19   Q.   Oh, sure, sure. Zoomed in?
20   A.   Just that's the only thing, but, again,
21 providing a thumbnail to give a sense that there is
22 something to look at and then describing some of the
23 fields of information that may be available if you --
24 with a subscription.
25   Q.   So if the user clicked on this sign up now

16 (Pages 58 - 61)

CONFIDENTIAL

Page 62

1 button that's available here on this hover over, where
2 would that take the user?
3   A. It would take them to the same page that
4 describes the options of the subscription, the packages
5 that we've talked about.
6   Q. Okay. And is the purpose of showing this
7 kind of blurred out preview in the hover over is to
8 show the user that should you sign up, this page is
9 available?
10   A. Yes, it's to give the user confidence that
11 should they sign up, that there are actual records
12 available for them to review and see if it's a match to
13 what they're trying to find.
14   Q. And the screenshot at the bottom of page
15 13, does this appear to be another hover over?
16   A. It does appear to be, yes.
17   Q. Same with the screenshot at the top of
18 page 14?
19   A. Yes.
20   Q. All right. That is all I have for that
21 exhibit. I am going to introduce Exhibit Number 3.
22 Give me a moment.
23   (Exhibit 3 marked)
24   Q. I'm sharing my screen again with a
25 document that has been marked Exhibit 3. The Bates

Page 63

1 number, which is on the bottom right-hand corner on the
2 first page is Ancestry 1. Do you recognize this
3 document, Mr. Godfrey?
4   A. I do. Would you mind making it just a
5 little bit wider? Thank you very much.
6   Q. So this first page appears to show your
7 book search results for Tony Sessa, correct?
8   A. Yes.
9   Q. What sort of user would see the search
10 results in this format that's shown in Exhibit 3?
11   A. Free trialists and subscribers should have
12 access to this page.
13   Q. And does this document, Exhibit 3, show
14 the full screenshot of what the Ancestry website would
15 look like when you're looking at the search results?
16   A. No, it's missing the header, for example,
17 on the page.
18   Q. Okay. And if the user that was looking at
19 this search, the free trial user or the subscriber
20 clicked the view record, where would that take the
21 user?
22   A. It would take them to the record page
23 itself where the image and all the fields of
24 information that we transcribed from the record are
25 available.

Page 64

1   Q. All right. That is it for that exhibit.
2 Introducing Exhibit 4.
3   (Exhibit 4 marked)
4   Q. I've marked Exhibit 4 and shared my
5 screen. This is a document with Bates number on the
6 first page Ancestry 6. I'll scroll through this whole
7 document, Mr. Godfrey, so you can generally see what it
8 is.
9   A. Okay.
10   Q. Do you recognize Exhibit 4?
11   A. I do.
12   Q. What is Exhibit 4?
13   A. It appears to be a search form
14 specifically for the yearbooks collection.
15   Q. And, so, if we're looking at the first
16 page, the title says U.S., school yearbooks, 1900-1999.
17 How does an Ancestry.com user access this yearbook
18 specific search page shown in Exhibit 4?
19   A. Sure, the primary way is if they choose
20 search on the homepage, for example, to get to the
21 global search or search all, there are categories
22 within that that can be filtered on available on that
23 page and they can filter down to the specific
24 collection and then come to this page.
25   Q. All right. So typed in the search fields

Page 65

1 on Exhibit 4 is Mark Sessa and a location of Nevada,
2 U.S.A. Do you see that?
3   A. I do.
4   Q. And then scroll down to the fourth page of
5 this exhibit, Ancestry 9 Bates number. Does this
6 appear to be the results for that search that was input
7 on the first page?
8   A. It does.
9   Q. And what sort of user would see the search
10 results in this format?
11   A. Registered users or visitors to the site.
12   Q. Okay. So if they clicked on this view
13 image, there's just a little thumbnail, would that be
14 -- would that result in a redirect to a page prompting
15 a subscription purchase?
16   A. Again, the list here, the search on the
17 list here showing the possible matches that we have, if
18 they click on any of those, then we show them the page
19 of the subscription package offering so that they could
20 access those results in more detail.
21   Q. And would there be a hover over for both
22 view record and the view image?
23   A. Yes, typically, yes, there is.
24   Q. Would those hover overs look materially
25 similar to the versions we just looked at in the

17 (Pages 62 - 65)

CONFIDENTIAL

Page 66

1 complaint?
2   A.   They would.
3   Q.   All right. I'm gonna move on to topic 5
4 and 6, which is about licensing or purchase of the
5 yearbooks in the yearbook collection. I'm happy to
6 keep going for a little while longer or if you'd like
7 to take a break, a lunch break, I'm not trying to
8 starve anyone out here. Let me know.
9   A.   I think I'm good to keep going 20-30
10 minutes.
11

Page 68

17   Q.   And when someone conducts a search in the
18 yearbook of the yearbook collection with a name, is
19 that search run against that, a database with those
20 transcribed names in it?
21   A.   It is.
22

Page 67

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Page 69

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Page 70

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15   Q.   When did Ancestry first start acquiring
16 yearbooks for use in its yearbook collection?
17   A.   As I mentioned earlier, I believe it's
18 sometime around 2007, 2008, but before my -- before I
19 joined the company.
20   Q.   Do you know when Ancestry first started
21 obtaining yearbooks from Nevada schools?
22   A.   Books from those schools could have been
23 as early as that, as those collections are varied.
24   Q.   Do you know how many total yearbooks are
25 in Ancestry's yearbook collection today?

Page 71

1   A.   Yes, a little bit over 250,000 books.
2   Q.   Do you know how many of those yearbooks
3 are from schools in Nevada?
4   A.   We do have that information, but I don't
5 have that information at my fingertips right now.
6   Q.   But that is knowable information?
7   A.   Yes.
8   Q.   Does Ancestry continue to add new
9 yearbooks to its yearbook collection?
10   A.   We do.
11   Q.   Approximately how many yearbooks per year
12 are added to the collection?
13   A.   It varies depending on what we find each
14 year, but a typical year may be 10,000, 15,000 more
15 books, depending on donations as well.
16   Q.   Do you have any sense of how many new
17 yearbooks from Nevada are added each year?
18   A.   I don't have that detail.
19   Q.   Is that something that is knowable?
20   A.   It is knowable, yes.
21   Q.   Can you describe for me at a high level
22 the yearbook donation process; how does that work?
23   A.   Sure. Any individual, whether they're an
24 Ancestry member or not, who is interested in donating
25 their book can go to the website and there's a form

Page 72

1 they can download to submit to where to send their
2 yearbook and, so, send along with the yearbook. It
3 comes to our offices here where we have local scanning
4 capabilities to scan and then transcribe the book and
5 publish it in the collection.
6   Q.   There's a form that gets filled out?
7   A.   (Witness nods head.)
8   Q.   Is that yes?
9   A.   Yes. Sorry. Yes.
10   Q.   Where is that form available to the
11 public?
12   A.   It's available on the collection page and
13 I believe it's also available on the yearbooks landing
14 page that we discussed before, the main search page for
15 the collection.
16   Q.   How do you get to the main search page for
17 the yearbook collection?
18   A.   You can, if -- you can go to the main
19 search and filter down to the right category and then
20 find the collection listed there to get to that main
21 search page.
22   Q.   And does that donations form get filled
23 out online or sent in via hardcopy?
24   A.   I believe that is sent in along with the
25 book. The instructions are sent along with the book.

Page 73

1   Q.   I'm introducing Exhibit 5, which I will
2 share.
3   (Exhibit 5 marked)
4   Q.   Introduced Exhibit Number 5, which is
5 titled School Yearbook Submission Program and I can
6 represent I downloaded this from the Ancestry.com
7 website yesterday, October 4th. Do you recognize this
8 document, Mr. Godfrey?
9   A.   I do recognize the document, yes, the
10 page, yes.
11   Q.   Does this appear to be the form that you
12 were just testifying about that gets sent in with a
13 yearbook donation?
14   A.   It does. It does appear to be that.
15   Q.   Do you know whether this form has changed
16 from 2016 to the present?
17   A.   I don't know for sure whether it's
18 changed.
19   Q.   Who would know that information?
20   A.   We could probably ask that of our product
21 organization, but I'm doubtful that it has changed.
22 It's been a pretty consistent program since it was
23 first started.
24   Q.   Would you expect that if there are prior
25 versions of this form, those would be available in

19 (Pages 70 - 73)

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Page 74

1 Ancestry's records?
2   A.   I wouldn't expect that just given the
3 longevity of -- or how long ago some of these could
4 have been provided, so.
5   Q.   Would you expect if it's been any
6 different from 2016 to the present that those versions
7 would be available in Ancestry's records?
8   A.   I don't have an expectation of that. I
9 don't know.
10   MS. BORRELLI: Jack, I just want to ask,
11 since it's top of mind, if there's a prior version of
12 this form, we would ask that it be produced in part
13 because Ancestry's interrogatory responses suggest that
14 consent may be provided via the donation form, I
15 believe. So we would want all prior versions of this.
16   MR. BAUMANN: That's that off the record,
17 and I'm not sure that this document would have been
18 responsive to any of plaintiffs' request for
19 production, which -- we can -- I'm happy to discuss.
20   MS. BORRELLI: Yeah, let's follow up.
21 Okay.
22   Q.   Is there anywhere in this yearbook
23 donation form, and let me know if you need me to
24 scroll, that suggests that the creator or the publisher
25 of the yearbook being donated intended the yearbook to

Page 75

1 be published on the internet?
2   A.   I'm not a lawyer, so I don't know for
3 sure, but I don't -- I think this document is speaking
4 to the intent of the submitter, the donor of the
5 yearbook and isn't speaking to the school, for example,
6 or the original organization that may have created it.
7   Q.   If you look under the heading Donation
8 Agreement, the second paragraph, it says I hereby
9 claim, to the best of my knowledge and efforts to
10 verify that each of the yearbooks hereby individually
11 identified on the reverse side are, A, not bound by
12 copyright restrictions or, B, the copyright is held by
13 the donor. Does Ancestry do anything to verify whether
14 the yearbook is bound by copyright restrictions or if
15 the copyright is held by the donor?
16   MR. BAUMANN: I'm going to object to the
17 extent it calls for a legal conclusion or asks for
18 information that you've heard from attorneys and, with
19 that, disclosed attorney-client privileged information.
20 To the extent you have knowledge of facts that are
21 separate and apart from those privileged conversations,
22 you can answer.
23   A.   I don't know that I have anything separate
24 from those privileged conversations that I'm aware of.
25   Q.   Who at Ancestry receives the donated

Page 76

1 yearbooks and donation forms and reviews those?
2   A.   So the donated yearbooks come into the
3 content organization, so my team here at the office.
4   Q.   Does that team ever have any follow-up
5 contact with the individual who donated the yearbook?
6   A.   They could if there are, for example,
7 questions about or maybe sometimes articles are left in
8 the yearbook, personal photos, other things they
9 probably didn't intend to send us that we'll, you know,
10 endeavor to try to return back to them. But as a
11 general rule, I don't -- no, I don't think there's
12 additional contact after the record -- after the book
13 has been delivered.
14   Q.   So, as far as you know, that team is not
15 reaching out to the individual to ask them whether they
16 hold a copyright in the yearbook that they've donated?
17   A.   No, they're not, nothing beyond the
18 representation here.
19   Q.   In Ancestry's interrogatory responses,
20 which I think you stated at the beginning of today you
21 reviewed in preparation for our discussion today,
22 correct?
23   A.   Yes.
24   Q.   In response to Interrogatory Number 1,
25 Ancestry stated, quote, Ancestry receives yearbook

Page 77

1 donations from individuals who enter into a donation
2 agreement with Ancestry and verify that the copyright
3 holder grants permission to Ancestry to put the
4 yearbooks online. Can you point me to where in this
5 document, Exhibit 5, it says that the copyright holder
6 is granting permission to Ancestry to put the yearbooks
7 online?
8   MR. BAUMANN: I'll object to the extent it
9 calls for a legal conclusion to the extent the document
10 speaks for itself.
11   Q.   You can answer the question, Mr. Godfrey.
12   A.   I don't know that I have anything further
13 to add other than the document, other than what's in
14 the document here itself.
15   Q.   Well, I'm asking you where in this
16 document does it say that the copyright holder grants
17 permission to Ancestry to put the yearbooks online?
18   MR. BAUMANN: Same objections, but you're
19 free to answer.
20   A.   I just look at the, I look at the last
21 line, which is where the user is either describing that
22 it's not bound by copyright restriction or that they
23 hold that copyright.
24   Q.   Okay. Is there anything in this document,
25 Exhibit 5, that suggests the donor is giving Ancestry

20 (Pages 74 - 77)

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Page 78

1 permission to use the yearbook to promote subscriptions
2 to Ancestry.com?
3   A.   We don't use any specific yearbook to
4 promote subscriptions to Ancestry.com.
5   Q.   But you would agree that if a yearbook
6 record is searched for by a visitor or a
7 nonregistered -- or a registered user, I'm sorry, to
8 view the record, they would be sent to a page promoting
9 subscriptions, correct? We walked through that?
10   A.   That's not using the yearbook collection
11 to promote the service. That's showing the user
12 possible matches to if they're interested in finding
13 and helping them understand that that service is behind
14 the subscription -- requires a subscription access, but
15 promotion implies something that's proactive from the
16 company, not something the user coming to search for
17 something and us showing them potential matches for
18 what they're searching for.
19   Q.   Okay, but the potential matches are
20 derived from yearbooks, correct?
21   A.   Potential matches to what they're
22 searching for are derived from the collection, but
23 those aren't promotions. That's the results -- that's
24 potential results for what the user is searching for.
25   Q.   And to view the results, which are from

Page 79

1 the yearbook collection, the person would need to
2 subscribe to the Ancestry.com service?
3   A.   Definitely, as are any of the other
4 services that are offered as part of the subscription.
5   Q.   Does Ancestry track which yearbooks are
6 received via donation?
7   A.   We do our best to, yes. We've been
8 gathering them for a very long time, so yes, we do our
9 best to do them.
10   Q.   How is that tracked?
11   A.   Through various spreadsheets and documents
12 over time based on different sources. Sometimes those
13 lists are included, for example, in licensing
14 agreements and other means.
15   Q.   Does Ancestry keep track of whether the
16 individual who donated a yearbook is a registered user
17 or subscribing user with Ancestry?
18   A.   We do not.
19   Q.   All right. I'm introducing Exhibit Number
20 6, which I will share.
21   (Exhibit 6 marked)
22

Page 80

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Page 81

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Page 86

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Page 88

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8   Q.   All right. Let's go off the record.
9   VIDEOGRAPHER: The time now is 11:50 a m.
10 We are off the record.
11   (Break)
12   VIDEOGRAPHER: The time now is a 12:31
13 p m. We are back on the record.
14   █ ████████████████████████
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Page 87

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Page 89

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Page 94

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Page 95

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Page 96

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Page 97

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Page 98

Page 100

Page 99

Page 101

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Page 106

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Page 108

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Page 107

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Page 109

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Page 110

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Page 111

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Page 112

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Page 113

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Page 114

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Page 115

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Page 116

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Page 117

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Page 122

Page 124

24   MS. BORRELLI: All right. Let's go off
25 the record.

Page 123

Page 125

1   VIDEOGRAPHER: The time now is 1:39 p m.
2 We are now off the record.
3   (Break)
4   VIDEOGRAPHER: The time now is 1:49 p m.
5 We are back on the record.
6   Q.   All right. Mr. Godfrey, I'm going to move
7 on to Topic Number 7, which is whether the publishers
8 of the yearbook included in the yearbook database
9 intended the yearbook names and yearbook photographs in
10 those yearbooks to be published in marketing emails and
11 on-site messages or in any other means intended to
12 promote Ancestry's subscription products.
13   At the time Ancestry purchased, licensed
14 or otherwise received yearbooks to include on
15 Ancestry.com, did Ancestry know whether the publishers
16 of those yearbooks intended them to be published on the
17 internet?
18   A.   We did not know specifically, but there
19 are plenty of examples of the original publishers of
20 the yearbooks sharing those records publicly with
21 either through students, faculty and staff, local,
22 state and local archives and making them otherwise
23 available and searchable on the web.
24   Q.   But did Ancestry for any particular
25 yearbook that it includes in its yearbook collection

32 (Pages 122 - 125)

CONFIDENTIAL

Page 126

1 confirm whether that yearbook was already publicly
2 available and on the internet and made publicly
3 available on the internet by the original publisher?
4   A.   No.
5   ████ ███████████████████████
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Page 127

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14   MS. BORRELLI: Yeah, Jack, if those exist,
15 we invite those be produced, please, for the time
16 period that the Court has ordered.
17   MR. BAUMANN: We can discuss that off the
18 record.
19   MS. BORRELLI: Sure. All right. That's
20 it for topic 7. See, Jack, not so objectionable.
21   Q.   Moving on to topic 9, the number of
22 yearbook names and yearbook photographs and the
23 yearbook database from schools in Nevada. I may have
24 asked you this earlier, so apologies, but do you know
25 how many yearbooks from schools in Nevada are in the

Page 128

1 Ancestry collection?
2   A.   I don't have the approximate count, but it
3 is knowable.
4   Q.   And that's knowable because Ancestry
5 categorizes each yearbook by state, correct?
6   A.   Because we can filter the database by
7 state, yes.
8   Q.   Does Ancestry ever remove yearbooks from
9 its yearbook collection?
10   A.   I'm not aware of removing entire yearbooks
11 from the collection.
12   Q.   Ancestry has represented that it does not
13 know how many yearbook names or yearbook, individual
14 yearbook records from Nevada yearbooks are in its
15 yearbook collection. Can you explain why Ancestry does
16 not know that information?
17   A.   So, sorry, two thoughts or two elements in
18 that response: The first is, the number of records
19 that we have from a book is not a match to the number
20 of names that are in the book. We do our best to find
21 every name and to extract every name. We use some
22 automation to help us with that at the scale, but we --
23 there's many that we miss, but the nature of yearbooks
24 themselves also makes that difficult in that for any
25 given yearbook a name can be, of a student, can be

Page 129

1 there multiple times, multiple students can have the
2 same name and then multiple yearbooks year after year
3 in a series, let's say a 4-year series having all four
4 books from each of those four years, could also all be
5 part of the database and, so, identifying a unique
6 count of names that we have in the book is almost
7 impossible to do.
8   Q.   With the information that Ancestry has,
9 could it make an estimate of the number of yearbook
10 names from Nevada yearbooks?
11   A.   We could not. Every yearbook is --
12   Q.   Tell me how many -- go ahead.
13   A.   As to every yearbook is structured
14 differently by wonderful well-meaning students at the
15 schools with a variety of formats with a variety of
16 types of areas where they may highlight individual
17 students individually on their page but also on
18 subsequent pages like sports teams and others and, so,
19 it is impossible to get an accurate estimate count of
20 the number of record -- the number of individuals from
21 any given book.
22   Q.   Could Ancestry estimate the number of
23 yearbook records associated with schools from Nevada?
24   A.   We do. We can find a yearbook count for
25 schools that are in the place of Nevada.

33 (Pages 126 - 129)

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Page 130

1   Q.   Not a yearbook count, I'm sorry, but --
2   A.   A record count. We could -- we can
3 provide a count of records that have come from books
4 that are placed in Nevada.
5   Q.   Okay.
6   MS. BORRELLI: Jack, that's another one we
7 should talk about offline.
8   MR. BAUMANN: Sure.
9   A.   What I would add to that is the
10 information about the records associated with a
11 particular book are not part of the database, so
12 there's a mapping, but to a variety of sources that
13 have varying degrees of information about each book.
14 The site is focused on this page from this place has
15 this name, but the book itself from production
16 standpoint and in the organization of how we produce
17 and extracted the names from the book are held in other
18 database sources and, so, there is a quite complex
19 mapping to get there to try to come up with that
20 answer.
21   Q.   But it is possible?
22   A.   It is possible. Just a level of effort.
23 As record, again, just as records.
24   Q.   Yes, understood.
25   A.   Not having a perfect understanding of the

Page 131

1 names in a given book.
2   Q.   And Ancestry has represented that it does
3 not know how many separate yearbook photographs from
4 Nevada yearbooks are in the yearbook collection. Why
5 does Ancestry not know that information?
6   A.   Could you define yearbook photographs? I
7 think that will help with the question.
8   Q.   Yeah, so, say Mark Sessa, he appears in a
9 particular yearbook in his individual photograph with
10 his class and then he also appears in a photograph with
11 the tennis team and the drama club so those are three
12 separate photographs?
13   A.   I think I understand the question. For
14 us, the image that we have is of the page. We don't
15 have -- we don't break that down further and store each
16 individual photo or head shot or sports team group
17 photo or what have you. The imagery that we have are
18 organized by page.
19   Q.   Didn't you testify earlier that each
20 photograph comes with its own special set of metadata?
21   A.   Each image, each page of the yearbook
22 comes with its own special metadata.
23   Q.   Got it. So each yearbook page, not each
24 specific photo on a yearbook page?
25   A.   Correct. When we're talking about

Page 132

1 scanning work or the images that we receive from
2 partners and those we acquired content from, we're
3 talking about page from the yearbook photo -- sorry,
4 from the yearbook itself, not the individual multiple
5 photos that could be on that page.
6   Q.   But then doesn't Ancestry tie each
7 photograph to a name?
8   A.   We do our best to try to tie some of the
9 head shots to a specific name -- well, record for us on
10 the page, but, again, all we store is the page itself
11 and then do our best to try to understand the pieces
12 that are within that page.
13   Q.   So does Ancestry keep track for any one
14 yearbook page how many individual records are
15 associated with that page?
16   A.   There is a record account of the number of
17 records that we have taken from the page. It is
18 something that is knowable. Again, not stored in the
19 main database on the service. It would take some --
20 quite a bit of work to do in mapping multiple sources,
21 but, but there is an association between the record and
22 the image of that record that that record appears in.
23   Q.   So you could potentially identify the
24 number of records associated with each yearbook?
25   A.   There is, with some work, there is

Page 133

1 possibility to do that.
2   Q.   Okay. Moving on to topic 10, the number
3 of subscribers whose accounts are associated with a
4 Nevada address and categories of information Ancestry
5 possesses about its subscribers. What information does
6 Ancestry collect from registered users as part of the
7 registration process?
8   A.   To register you simply need to provide an
9 email address and set a password.
10   Q.   Can registered users tie themselves to any
11 records in the Ancestry collections? Like, could I
12 register and tie myself to my yearbook photo?
13   A.   It's not really how the service works. As
14 a registered user, you can come in and create a family
15 tree, you can create multiple family trees. You can
16 create one for your spouse or your cousin or friend if
17 you like and within each one of those, you would list
18 family members, you know, that you're looking for or
19 that you know are on that family tree and that may or
20 may not include yourself in that family tree, but
21 again, that's for use of the family tree. The
22 association with records is not connected to that.
23   Q.   So if I start a family tree with myself in
24 that tree, can I tie Ancestry records to that family
25 tree so if someone is looking for me to do their own

34 (Pages 130 - 133)

CONFIDENTIAL

Page 134

1 family tree, they find that, you know, Raina Borrelli
2 is associated with the use of your book records and
3 this birth certificate?
4   A.   Yeah, so, when you use the service and you
5 find records, you search for records using the search
6 process we described and you find one that you believe
7 is associated with someone in your family tree, whether
8 it's yourself or someone else, you can save that record
9 in the family tree to that name, to that person on your
10 tree, again, yourself or others and you can do that
11 across the yearbook collection, across all the
12 collections and records that we have and then as you
13 collaborate with other people on the service, usually
14 cousins are on the service, others that are related or
15 interested in the same family trees, you can share
16 those discoveries with them and vice versa.
17   Q.   So is there a way to identify registered
18 users who have associated themselves on their family
19 tree with a Nevada yearbook record?
20   A.   Not at an aggregate level. What we can
21 understand is who are the users in a discovery in the
22 yearbooks and save something to someone in their tree,
23 but the element of being their own personal record for
24 themselves is not something that we, we specifically
25 track.

Page 135

1   Q.   Okay. And what information does Ancestry
2 collect from free trial users as part of the
3 registration process?
4   A.   Our focus would be on the billing
5 information required for the payment. So for example,
6 currently we collect the ZIP Code and the payment
7 information itself from the card.
8   Q.   Does Ancestry require free trial users to
9 input a billing address or just a ZIP Code?
10   A.   We require a ZIP Code.
11   Q.   And then what information does Ancestry
12 collect from paying subscribers as part of the
13 subscription process?
14   A.   It would be very similar to free
15 trialists. Most subscribers were just formally free
16 trialists.
17   Q.   Do paying subscribers need to disclose a
18 home address or billing address or just a ZIP Code?
19   A.   Current paying subscribers do not need to
20 disclose anything more than the basics for billing and
21 right now that's the ZIP Code.
22   Q.   In Ancestry's interrogatory responses in
23 response to Interrogatory Number 10, it states that it
24 can determine the total number of Ancestry paying
25 subscribers whose accounts are associated with a Nevada

Page 136

1 billing address. Does that refresh your memory as to
2 whether Ancestry collects billing addresses for paying
3 subscribers?
4   A.   Sure, the ZIP Code would provide that
5 association.

Page 137

35 (Pages 134 - 137)

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Page 138

1   Q.   I will move on to topic 11, process by
2 which Ancestry obtains consent from the subject of
3 yearbook names and yearbook photographs to use their
4 yearbook photographs in marketing emails and on-site
5 messages, including whether such consent was obtained
6 from plaintiffs or the class.
7   Does Ancestry obtain written consent from
8 each individual appearing in a yearbook record on
9 Ancestry.com to display their name and yearbook photo
10 on Ancestry's website?
11   A.   Again, examples where we do receive
12 consent are the terms, people signing up for the terms
13 and conditions of the site as a user and the example of
14 those who donate their own individual yearbooks for use
15 on the website, but outside of that, generally no, we
16 do not seek that consent.
17   Q.   So if an individual has never visited
18 Ancestry.com or has never registered or signed up in
19 any other way, Ancestry has not obtained expressed
20 written consent to display their yearbook photo,
21 correct?
22   A.   Correct.
23   Q.   Does Ancestry have any written policies or
24 procedures outside of the terms of service related to
25 obtaining consent from the subjects of yearbook photos

Page 139

1 in its yearbook collection?
2   A.   Not that I'm aware of.
3   Q.   Has it ever had any such policy?
4   A.   Again, not that I'm aware of.
5   Q.   So in response to Interrogatory Number 3,
6 which asks about the ways in which Ancestry obtains
7 written consent from the subject of yearbook photos,
8 Ancestry responded that Ancestry users provide consent
9 through agreement to Ancestry's terms and conditions;
10 is that correct?
11   A.   Yes, that's correct.
12   Q.   I think you testified earlier that the
13 terms of service would only apply to people who
14 registered as a user or have a free trial or a paid
15 subscription, correct?
16   A.   Yes.
17   MR. BAUMANN: Object to the extent that
18 calls for a legal conclusion.
19   Q.   Sitting here today, can you identify which
20 portion of the Ancestry terms of service requires users
21 to provide consent for the use of their yearbook
22 photograph and record?
23   MR. BAUMANN: I'll object to the extent it
24 calls for a legal conclusion and that document speaks
25 for itself.

Page 140

1   A.   Yeah, I would say I can't at the moment
2 without reviewing.
3   Q.   Okay. We can look at some examples of the
4 terms of service, which has been modified a bit over
5 the years. So let's pick one. I will introduce
6 Exhibit 17, which is Bates stamped Ancestry 716.
7   (Exhibit 17 marked)
8   Q.   Do you recognize this document, Exhibit
9 17?
10   A.   Generally, yes, obviously an older
11 document, but yes.
12   Q.   Sure. I will scroll through this and let
13 you read. I'd like you to just identify the portion of
14 this terms of service that provides that the user is
15 giving consent for the use of their yearbook record on
16 Ancestry.com.
17   MR. BAUMANN: And objection; calls for a
18 legal conclusion, the document speaks for itself.
19   A.   You can scroll to the next page if you
20 like.
21   Q.   Just let me know when I need to scroll.
22   A.   Again, you're asking me to look for
23 explicit permission for the yearbook photo to be shared
24 on the site?
25   Q.   Ancestry's response to Interrogatory

Page 141

1 Number 3 said Ancestry users provide consent through
2 agreement to Ancestry's terms and conditions and the
3 request was asking where is there consent provided for
4 the use of yearbook records.
5   A.   So, again, from my limited perspective,
6 not being on the legal side, I think there is a section
7 in the scroll above that speaks to user-provided
8 content and that's an area that speaks to records that
9 are specific to them as an individual.
10   Q.   Does user-provided content include
11 yearbook records that are not provided by the user?
12   MR. BAUMANN: Same objections.
13   A.   I'm not sure how to respond given you're
14 asking me to clarify legal language.
15   Q.   Well, Ancestry's interrogatory responses,
16 which I believe are signed by you, say -- yes, you
17 signed those -- say that in response to Interrogatory
18 Number 3 -- why don't I just put this up. I'm gonna
19 switch the document we're looking at if that's okay.
20   A.   I can see the -- sorry.
21   Q.   Oh, you can see the interrogatories?
22   A.   Yeah.
23   Q.   Oh, great. I wasn't sure that was just
24 showing the exhibit page. Okay, so, identify and
25 describe the process by which Ancestry obtains written

36 (Pages 138 - 141)

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Page 142

1 consent as required by NRS 597.790(2) from plaintiffs
2 or any members of the class for the use of their
3 yearbook photographs, yearbook names, and/or personal
4 information in on-site messages or marketing emails.
5   And in response, which you signed as to
6 the substantive response, it says Ancestry users
7 provide consent through Ancestry's terms and
8 conditions. I'm asking where in the terms and
9 conditions that consent is provided.
10   MR. BAUMANN: I'll lodge the same
11 objection. This interrogatory and how he responded to
12 it asked about the facts as to how users might provide
13 consent. What you're asking now is for legal
14 assertions and legal interpretations of the contract
15 relating to whether that consent might be sufficient.
16 So this describes the facts, Mr. Godfrey described the
17 facts and as a witness that's what he's here to do.
18 The legal aspects of it are for you and I and the Court
19 to, ultimately, respectively. So, again, object on the
20 grounds that this calls for a legal conclusion.
21   MS. BORRELLI: Well, there is a factual
22 response. Ancestry is asserting that users provide
23 consent through agreement to Ancestry's terms and
24 conditions. All I'm asking is where in the terms and
25 conditions is that consent provided? If the answer is

Page 143

1 I don't know, then that's the answer, but I think I'm
2 entitled to an answer to this question.
3   MR. BAUMANN: -- facts, which is what
4 Ancestry provided in the interrogatory response and
5 what Mr. Godfrey provided now, and I think he's already
6 answered your question, but go ahead, Mr. Godfrey. I'm
7 not instructing you not to answer.
8   A.   Yeah, I don't know how to answer your
9 question.
10   Q.   Okay. And if I show you any other
11 versions of Ancestry's terms and conditions that have
12 existed between 2010 and the present, do you think
13 you'd be able to identify where in those terms and
14 conditions Ancestry users provide consent to have their
15 yearbooks, photographs, used by Ancestry?
16   A.   I don't know that I would.
17   Q.   Okay. I'm sorry, I'm gonna put that right
18 back up. Also in response to Interrogatory 3 Ancestry
19 stated in addition, plaintiffs and putative class
20 members could consent via an agent or other third
21 party; for example, through an attorney's agreement to
22 Ancestry's terms and conditions in signing up for
23 Ancestry's services.
24   How does Ancestry track if it has received
25 consent from any plaintiff or putative class member via

Page 144

1 that methodology?
2   A.   I don't, I don't have any information
3 about that.
4   Q.   So, as far as you know, Ancestry does not
5 keep track of whether consent has been provided in that
6 way?
7   A.   I just don't know our process for doing
8 that.
9   Q.   As far as you know, is there any record of
10 such explicit written consent related to consent via
11 agent or other third party?
12   A.   I wouldn't be familiar with whether there
13 is.
14   Q.   And then that response continues by
15 Ancestry, it says, further plaintiffs and the putative
16 class members could consent by providing consent to a
17 third party who in turn provided consent to Ancestry.
18 What does that mean? What third parties could have
19 provided consent?
20   A.   I'm only speculating, but it could be, for
21 example, the archive from which we received permission
22 to publish the collection to publish the individual
23 book, as an example, but I'm . . .
24   Q.   Does Ancestry keep track of whether any
25 plaintiff or putative class member consented by

Page 145

1 providing consent to a third party?
2   A.   I'm just not familiar with that to know.
3   Q.   So sitting here today you can't point to
4 any records of explicit written consent by plaintiffs
5 or putative class members that provide consent through
6 a third party?
7   A.   I'm just not, I'm just not aware of that
8 part of the process, so I don't have any knowledge
9 either way.
10   Q.   Beyond these three categories identified
11 in Ancestry's interrogatory response with respect to
12 how it obtains consent, are there any other ways in
13 which Ancestry alleges it obtains consent from the
14 subjects of yearbook records to display their photos on
15 Ancestry?
16   A.   As we have described, the yearbook
17 donation program and specifically contributed by users
18 in the book -- or individuals, excuse me. They may not
19 be users, but individuals in the book.
20   Q.   Has Ancestry ever provided notice to the
21 subject of the yearbook records in its yearbook
22 collection that their yearbook records appear on
23 Ancestry.com?
24   A.   Outside of those users searching the
25 collection and finding them or identifying them in that

37 (Pages 142 - 145)

CONFIDENTIAL

Page 146

1 way, I'm not aware that we have.
2   Q.   Does Ancestry contend that it received
3 consent from the plaintiffs in this case, Anthony Sessa
4 or Mark Sessa, to display their yearbook photos on
5 Ancestry?
6   MR. BAUMANN: Calls for a legal
7 conclusion.
8   A.   I'm not familiar with the plaintiffs'
9 interactions with the terms and conditions or their
10 status as a user.
11   Q.   All right. Topic 12, Ancestry's
12 understanding as to whether their use of yearbook
13 photographs, yearbook names and other personal
14 information implicates the privacy of the subject or
15 their intellectual property right. Would you agree
16 that yearbook photographs are often photographs of
17 people when they were minors?
18   A.   Yes.
19   Q.   Do you agree that yearbook photographs are
20 often personal?
21   A.   I don't.
22   Q.   Okay. Why don't you?
23   A.   Because the yearbook is compiled as part
24 of a process at the school and, you know, and broadly
25 distributed publicly to all the attendees of the school

Page 147

1 and the local community and in many other ways.
2   Q.   Do you agree that some people may not want
3 their yearbook photographs published on the internet?
4   MR. BAUMANN: Calls for speculation.
5   A.   Generally it's been our experience that
6 some people have -- had objected and have requested
7 that we remove them.
8   Q.   Has Ancestry ever had internal discussions
9 about privacy concerns associated with publicizing on
10 the internet yearbook photos?
11   MR. BAUMANN: I'll just object to the
12 extent this question asks for communications and advice
13 received from counsel, whether outside counsel or
14 internal counsel. I would instruct you, Mr. Godfrey,
15 not to answer on the basis of privilege. To the extent
16 you have an understanding that is independent from any
17 conversations with your attorneys, then you can go
18 ahead and answer.
19   A.   Those subjects would involve discussions
20 with attorneys and, therefore, I have no response.
21   Q.   Okay.
22   MS. BORRELLI: Ann, actually, could you
23 read back my question before the objection.
24   (The requested portion of the record was
25   read by the court reporter.)

Page 148

1   MS. BORRELLI: So, Jack, I understand your
2 objection. I think this is a yes or no question and I
3 think the fact the discussions have happened whether or
4 not they involved attorneys is not privileged.
5   MR. BAUMANN: I disagree. You're asking
6 about the fact of specific conversations and specific
7 content and whether those occurred, the fact that those
8 conversations and whether they occurred would be
9 privileged because it's specific to -- I mean, by
10 asking that very question, were you to receive a "yes"
11 answer, you would then know about privileged
12 conversations that Ancestry had with its attorneys and
13 the content of those conversations. The instruction on
14 that one stands.
15   Q.   Okay. Topic 13 requests that Ancestry has
16 received to remove yearbook names, yearbook photographs
17 or other personal information from Ancestry.com,
18 including any policies or procedures of Ancestry and
19 Ancestry's response to such requests. Does Ancestry
20 have a procedure for individuals to request that
21 Ancestry remove their yearbook record from its yearbook
22 database?
23   A.   Yes, we do.
24   Q.   And what is that, what is that procedure?
25   A.   An individual who can either contact our

Page 149

1 customer support center or on the record itself, anyone
2 on Ancestry can request the removal of a record for
3 themselves or their children and those requests are
4 routed to our customer service organization to review
5 them and then if confirmed that meets the criteria,
6 then they remove the record from the database.
7   Q.   What are the criteria for removal?
8   A.   Again, it's a record -- to the best of our
9 understanding, that it is a record about yourself or a
10 child of yours, which is a general policy across all of
11 our record collections.
12   Q.   And to the best of your knowledge, does
13 Ancestry always follow that policy and procedure when
14 such a request is made?
15   A.   We do make every effort to do so.
16   Q.   When did that procedure first begin at
17 Ancestry?
18   A.   Boy, that procedure probably predates my
19 time at Ancestry, so it's been at least over a decade.
20   Q.   So has Ancestry received requests from
21 individuals to remove their yearbook record from its
22 yearbook collection?
23   A.   Yes, we have.
24   Q.   And practically speaking, how does
25 Ancestry accomplish that?

38 (Pages 146 - 149)

CONFIDENTIAL

Page 150

1   A.   Once the request is received, you're
2 either, again, verbally by calling, by contacting
3 customer service or by on-site at the record, you can
4 request it there. Those requests are gathered quickly
5 by our customer service team, again, reviewed for the
6 criteria to the best of their ability, always, again,
7 deferring to the user. The bar is very low for
8 validating that it is your record or your child's
9 record, but because of our interest in privacy, we
10 defer on that and then we delete the record from the
11 collection.
12   Q.   So you would agree that Ancestry provides
13 that procedure in the interest of people's privacy,
14 correct?
15   A.   We provide that at the request of the
16 user. Their motivation may vary, but we provide that
17 at the request of the user.
18   Q.   But I think you just testified that you
19 would remove the record in the interest of privacy if a
20 person so requests, correct?
21   A.   For whatever reason they may request it,
22 we would remove the record, yes.
23   Q.   But wouldn't you agree that Ancestry could
24 just say no, I'm not removing the record?
25   A.   That is not our policy or process. We

Page 151

1 remove the record when we're asked.
2   Q.   Right, but you would agree Ancestry could
3 say no, I'm not going to do that?
4   A.   I wouldn't speculate on that. Our policy
5 has been fairly consistent for over a decade and that
6 is the policy.
7   Q.   Right, and that's the policy because
8 Ancestry is concerned about privacy when someone
9 expresses a concern directly to Ancestry about that
10 issue, right?
11   A.   We are responding for whatever reason the
12 user is requesting their record to be removed, and
13 there are varied reasons. We don't speculate on why.
14 We just respond to the request affirmatively.
15   Q.   If a request is granted, how is the record
16 removed from the collection?
17   A.   We have a procedure for an individual
18 record to be removed from the database and then once
19 that record is removed, then it is effectively deleted,
20 is no longer part of the collection or available to
21 search or anything else.
22   Q.   And has Ancestry, in fact, received such
23 requests?
24   A.   We have received requests.
25   Q.   Do you know what percentage of those have

Page 152

1 been granted versus denied?
2   A.   The majority of them have been granted. I
3 think a denial is very rare. Probably be predominantly
4 focused where the user represents that they are not the
5 person involved or don't have any association with any
6 relationship, I should say, with the person directly
7 speaking about.
8   Q.   Are those requests, to the extent they
9 come in in written form, saved anywhere?
10   A.   I believe so, but I can't confirm.
11   Q.   Who would have that information?
12   A.   Probably our customer service
13 organization.
14   Q.   Do you know if those requests come in via
15 phone if they are memorialized in some way?
16   A.   Just want to make sure I understand the
17 question. Can you -- just what you mean by
18 memorialized.
19   Q.   Yeah, if someone calls in to ask that
20 their yearbook record be removed, is there some written
21 record of that interaction with that individual?
22   A.   I'm fairly certain there's, for example, a
23 customer service ticket or something that would be
24 tracking that particular request.
25   Q.   And if those did exist, you think they

Page 153

1 would be within the customer service organization?
2   A.   I do believe so, as they've been
3 responsible for managing that process over time.
4   Q.   How does Ancestry handle removal requests
5 that are granted if the individual appears in like a
6 group photo in a yearbook as opposed to only like an
7 individual head shot?
8   A.   Again, we would remove the record from the
9 database.
10   Q.   Even if that record involved people other
11 than the requesting individual?
12   A.   We would not remove others, other records
13 that may be involved in that request. We would only
14 remove the record for the person making the request.
15   Q.   What if I made a removal request and it
16 was granted and I also appear in a group photo of the
17 swim team, how is that handled?
18   A.   Either the user often communicates to us
19 all the places in the yearbook where they feel that
20 they appear and/or we take some effort as well on our
21 side to try to identify as best we can and remove those
22 instances.
23   Q.   So the entire swim team photo could be
24 removed, for example?
25   A.   No. No, we remove the record for the

39 (Pages 150 - 153)

CONFIDENTIAL

Page 154

1 person requesting their record be removed.
2   Q.   What do you mean by remove the record in
3 the instance of like a group photo?
4   A.   If the group photo has ten names under it,
5 we remove the name of the person who's requesting their
6 name, their record be removed from the database.
7   Q.   What about the image of the person; would
8 their face still appear in the group photo?
9   A.   It would still appear.
10   Q.   Okay.
11   A.   And the other individuals in the team,
12 swim team in this case, would be separate records.
13   Q.   Understood. All right. Topic 14, all
14 instances in which plaintiffs' name and/or photograph
15 appeared in marketing emails or on-site messages. So
16 you would agree if I searched for Anthony or Mark Sessa
17 from the main Ancestry search page as just a visitor
18 or -- or a registered user, if I searched for their
19 yearbook records, a search result page would be
20 returned that includes their names, correct?
21   A.   A search result would be returned that
22 would include records that matched that name.
23   Q.   And if I tried to click on a preview of a
24 yearbook photo associated with either of those names, I
25 would be redirected to a page with subscription

Page 155

1 information, correct?
2   A.   The next page you would move to would help
3 you understand the packages available to acquire a
4 subscription.
5   Q.   And if I hovered over the view record or
6 view photo resolved associated with Mark Sessa or
7 Anthony Sessa on that search, there would be a hover
8 over that includes a sign up now button, correct?
9   A.   Yes.
10   Q.   Okay. Does Ancestry track whether
11 particular names or records have been searched for?
12   A.   No. There's a loose association between a
13 search and a record. A search can return thousands of
14 search results and we do, particularly for registered
15 users and subscribers, we do keep a history for their
16 sake of searches they conducted in the past in case
17 they want to come back and conduct that search again,
18 but we do not keep track of the records that showed up
19 in the search, in the results list for any given
20 search.
21   Again, the user is providing us parameters
22 for who they may be looking for and seeking on the site
23 and then we're returning search results our best effort
24 to try to match, to try to find matches of our records
25 that may be associated with those search parameters.

Page 156

1   Q.   So if I asked you has Anthony Sessa's name
2 ever been searched for within the Ancestry yearbook
3 collection, could you tell me whether it has or has
4 not?
5   A.   Generally, no. If Anthony had a
6 registered user account and searched for himself, that
7 may be in his recent searches kind of history for his
8 benefit so that he could -- so he could repeat a search
9 he's used in the past to research, but that would be
10 unique for Anthony.
11   Q.   Does Ancestry know whether a particular
12 yearbook record has been viewed or attempted to be
13 viewed?
14   A.   We do know when a record has been viewed.
15 So an individual record has been seen in what we would
16 term the record page, which we looked at earlier.
17   Q.   Would you know whether that record had
18 been viewed by a visitor, a registered user or a
19 subscriber?
20   A.   It can only be viewed by a subscriber or a
21 free trialer.
22   Q.   Could you tell whether it was viewed by a
23 free trial user or a paying subscriber?
24   A.   We could tell who viewed it and what their
25 status was at the moment whether they were in their

Page 157

1 free trial or had subsequently become a subscriber at
2 the time.
3   Q.   Okay. Can you tell whether anyone has
4 attempted to view, for example, Anthony Sessa's
5 yearbook record, who was a visitor or a registered
6 user?
7   A.   Yes, if we know the user, meaning they at
8 least have registered, then we can -- we do track the,
9 for a period of time, the records that they have
10 attempted to view.
11   Q.   So given all of that, do you know whether
12 any free trial user has viewed Anthony or Mark Sessa's
13 yearbook records?
14   A.   We know -- I'm not recalling free trial
15 specifically, but I do know there are users who have
16 viewed those, those records, yes.
17   Q.   And when you say users, are you including
18 registered users in that?
19   A.   I think it would have to be, having viewed
20 the record, it would have to be free trial or
21 subscription status in order to do that.
22   Q.   And do you know whether any registered
23 users have attempted to view Anthony or Mark Sessa's
24 yearbook records?
25   A.   Sorry, I'm just trying to recall whether

40 (Pages 154 - 157)

CONFIDENTIAL

Page 158

1 we did. I don't know whether we do have that or not.
2 I don't think on the attempt. I think it's the actual
3 view that we understand.
4   Q.   But you agree that whether an attempted
5 view has been made is something that you could find
6 out?
7   A.   Yes. I think that might be, that may be
8 information that we only store for a very limited
9 amount of time. Again, it's primary purpose is focused
10 on optimizing, you know, the search experience and the
11 product managers constantly trying to improve how that
12 is organized for any user, probably use that kind of
13 data, but I don't think it's data we track historically
14 associated with any user for that type of purpose.
15   Q.   And do you have a way to track whether an
16 attempted view of Anthony or Mark Sessa's yearbook
17 records led to any user to purchase a subscription?
18   A.   Well, when the user decides to purchase a
19 subscription, they've usually attempted to view lots of
20 records and then when they free trial, they view dozens
21 and dozens of records and hopefully if we're
22 successful, save dozens and dozens of those records to
23 their family tree on their journey deciding if they're
24 going to become a subscriber. We do track the records
25 that are involved in that process and the whole

Page 159

1 collection of records that they have found saved to
2 their tree, been successful with and all those are --
3 the data does understand all that they have found on
4 their -- or anyone who has become a subscriber.
5   Q.   So for anyone who has become a subscriber,
6 you could identify records they viewed or attempted to
7 view or tied to their family tree before they purchased
8 their subscription?
9   A.   I think, I think we have some of that
10 information for a period of time. I don't know how
11 long we store that information, but I do think we have
12 that, and any record that they have actually saved,
13 found and we would say discovered, meaning they have
14 saved it to their family tree, it matches someone that
15 they were looking for, we certainly save that
16 information and have that information as well.
17   Q.   Do you know whether Anthony or Mark
18 Sessa's yearbook record has ever appeared in a hint
19 email?
20   A.   I don't think that it has. It would only
21 appear to someone who has their names and enough
22 information to possibly match the record for a hint to
23 be created in the first place. So our hints are
24 guesses of what you might be looking for, a hint is our
25 response to you creating a family member in your tree

Page 160

1 and us, as is the expectation that we set with users
2 using the service, we will proactively go out and see
3 if we can identify records that might match and we will
4 proactively send those to you on a regular basis to try
5 to do our best to help you in your search.
6   And, so, in order to receive any hint
7 email, first of all, a hint would have to be created
8 that matches a person you told us you're looking for
9 and the criteria around that person, right, their age,
10 their location, things like that. We want to be
11 reasonably certain that the hint we're suggesting is
12 going to be matched for you. We're not well served if
13 it's not, you know, and, so, that's almost, if you
14 will, a proactive search on our part to help you in
15 your search for those records.
16   And a subset of those hints, many people
17 get lots and lots of hints on a weekly basis, at least
18 that's our intention and hope, but a few of those hints
19 are then provided in kind of ongoing updates so that
20 you know what we're finding that are potentials for you
21 to come and explore.
22   Q.   Do you know whether Anthony Sessa or Mark
23 Sessa's yearbook record has been associated with any
24 family tree such that they could be pulled for a hint
25 email?

Page 161

1   A.   I don't believe so.
2   Q.   Does Ancestry retain records of each hint
3 email it sends?
4   A.   We certainly retain records of all the
5 hints that we generate, so all of the possible record
6 matches and, again, those are available to users as
7 well when they login to the site and they look for, you
8 know, what Ancestry proactively found for me from my
9 family tree and, so, we certainly have that.
10   Again, a subset of those just
11 representative examples from those hints that we have
12 found recently are included in the hint email and I'm
13 not perfectly aware of whether we store which of those
14 have been included in the email or not. I think we
15 have that data, but I would need to confirm.
16   Q.   Who would know whether that data exists?
17   A.   That would come from our product
18 organization and that's something that we can
19 understand. I was just saying to add to that, there's
20 no hint unless, to be generated, unless you tell us, a
21 user tells us what they're looking for and, so, in this
22 particular case, plaintiffs would have to created a
23 tree and told us and placed themselves amongst other
24 people perhaps in their family tree before there would
25 be any hint that we would generate or any hint email

41 (Pages 158 - 161)

CONFIDENTIAL

Page 162

1 that we would send to them specifically.
2   Q.   Got it. And, again, the hint email is --
3 the hints are created via a best guess of what records
4 may interest a person based on their family tree that
5 they've created, correct?
6   A.   That is correct.
7   Q.   And, so, you agreed, I think, much earlier
8 today that those hint records can be pulled from any of
9 the records in Ancestry and the algorithm just does its
10 best to identify what may be relevant?
11   A.   That's correct. The algorithm does its
12 best to say based on what you've told us you're looking
13 for by the expression of your family tree, the people
14 that you've included in your family tree, think of it
15 as a proactive search on our part to try to find
16 matching records for you that you could come and review
17 and decide for yourself, again, if they are a match or
18 not, and many of them may not be.
19   Our goal is to be as accurate as we can be
20 and then you indicate that to us by saving that record
21 to your tree and that's when we know we have presented
22 a good hint, a good match.
23   Q.   Do you know definitively sitting here
24 today whether any of Anthony Sessa or Mark Sessa's
25 yearbook records have been included in a hint email?

Page 163

1   A.   I don't know that they have been included
2 in a hint email.
3   Q.   You don't know one way or the other?
4   A.   I don't know one way or the other. I'm
5 fairly certain they have not been included in a hint
6 email, but again, we can confirm that.
7   Q.   So there's a way to search every hint
8 email that has ever been sent to see if their records
9 have been included?
10   A.   No, we could start by looking to see if
11 there were hints generated that matched their records.
12 That would be where I would start.
13   Q.   Understood.
14   A.   And if not, and if not, then there could
15 not have been any hint emails sent that included them.
16 But that hint email would only be sent to someone in
17 response to them searching for the plaintiff's name and
18 by including them on their family tree.
19   Q.   How long does Ancestry retain hints that
20 are generated?
21   A.   That varies. We store them for a very
22 long time, obviously, because they're still relevant to
23 the user until the user has come and reviewed them and
24 made a determination whether that's indeed, you know,
25 their mother or their grandmother in the record and

Page 164

1 save them. I'm sure for sake of storage purposes,
2 things, there may be a volume at which we might, you
3 know, clean some of that up a little bit, some of the
4 oldest generated hints, you know, from the past, but
5 for the most part, those are there typically available
6 long-term for the user.
7   Q.   Okay. So do you think that Ancestry has
8 records of hint emails sent from between December 2016
9 and the present?
10   A.   Records of hints that we generated, yes, I
11 would anticipate that we would. Record of hint emails
12 sent, I don't know.
13   Q.   Okay.
14   A.   Again, just the association there is the
15 hint, there's no hint email -- there's no hint in the
16 email unless we generate the hint and we don't generate
17 the hint unless the user tells us what we should be
18 searching for on their behalf. So where their
19 interest, we're just responding to their interest that
20 they've expressed.
21   Q.   All right. We'll look at that. We mostly
22 covered topic 16 with that discussion, which is the
23 process and flow by which marketing emails are sent,
24 but I do want to look at one exhibit related to that.
25   A.   Okay.

Page 165

1   (Exhibit 18 marked)
2   Q.   I've marked Exhibit 18, which is Ancestry
3 699. I think this is -- here.
4   A.   Difficult one to see, but I think I've got
5 it.
6   Q.   That's as big as it goes.
7   A.   Let's see if I can see it there.
8   Q.   I want to know if you have any idea what
9 this document is showing because I do not.
10   A.   In the -- could you scroll to the right
11 just so we can understand what else is said and then
12 down to the bottom, please. Thank you. So database
13 1265 is the U.S. yearbook collection. This is a search
14 of a database table that stores the records of hints
15 sent in a weekly hint email.
16   So this is what we do -- the information
17 that we do have, again, probably for a period of time
18 around weekly hint emails that were sent and that is
19 looking at the U.S. yearbook collection for specific
20 record ID's and I'm assuming these record ID's are the
21 plaintiffs -- associated with the plaintiffs and that
22 is what is being queried and I'm seeing no results,
23 zero records as a result of that query.
24   Q.   Okay. But again, you don't know how long
25 those weekly hint emails are retained such that they

42 (Pages 162 - 165)

CONFIDENTIAL

Page 166

1 could be searched in this database; is that correct?
2   A.   That's correct. I'm just not personally
3 aware, but that is something that we can know and may
4 very well be, you know, long historical for a decade.
5 I just -- we can clarify.
6   Q.   Okay.
7   A.   Thank you for zooming in on that.
8   Q.   No problem. All right. Let's go off the
9 record for a minute.
10   VIDEOGRAPHER: The time now is 2:54 p m.
11 We are off the record.
12   (Break)
13   VIDEOGRAPHER: The time now is 3:18 p m.
14 We are back on the record.
15   Q.   Okay, Mr. Godfrey, I'm going to move on to
16 the 30(b)(6) topics, which is topic 15, the process and
17 flow of Ancestry's website, Ancestry.com, when a
18 non-subscribing user searches for a yearbook name or
19 yearbook photograph, including all landing pages,
20 on-site messages or other pop-up's.
21   Before I get started, I wanted to ask you
22 has Ancestry removed either of the plaintiffs' yearbook
23 records from Ancestry.com?
24   A.   I don't believe we have.
25   Q.   All right. So I'm going to share my

Page 167

1 screen with you.
2   MS. BORRELLI: And, Andrea, this is where
3 I'd like to create an exhibit of a video of navigation
4 through the exhibit while Mr. Godfrey is testifying.
5 All right?
6   Q.   Mr. Godfrey, do you see the landing page
7 for Ancestry?
8   A.   Yes, it's working.
9   MS. BORRELLI: And I believe this will be
10 Exhibit 19 once it is created. Andrea, do you have
11 everything set up as you need it?
12   VIDEOGRAPHER: I do.
13   Q.   I'm going to get started then.
14 Mr. Godfrey, is what you see on the screen in front of
15 you right now appears to be the public Ancestry.com
16 landing page?
17   A.   It does.
18   Q.   And if I wanted to conduct a search for an
19 individual, an individual's yearbook records, where
20 would I go from here? What do I click on?
21   A.   That would be under the genealogy section.
22 You could start there.
23   Q.   Okay, I will click on genealogy. And now
24 redirected to that page, does this appear to be the
25 main page for the genealogy section of the Ancestry.com

Page 168

1 website?
2   A.   It does.
3   Q.   All right. So if I wanted to continue and
4 conduct a search for an individual's yearbook record,
5 what would I do next?
6   A.   Up at the top next to the Ancestry logo
7 you see trees and then search, you could click on
8 search.
9   Q.   Okay. And there's a pop down of various
10 all collections, census, et cetera. What should I
11 click on?
12   A.   You can click search all collections.
13 Let's start there.
14   Q.   So is this the main search page for
15 Ancestry's record collection?
16   A.   This is and this would search all of the
17 records that we have across all categories and then on
18 the right you see some of the categories of records
19 that you can filter down on.
20   Q.   And under which of these categories on the
21 right-hand side would yearbook records appear?
22   A.   Just to the bottom of the map you see on
23 the right, you see schools, directories and church
24 histories?
25   Q.   Yes.

Page 169

1   A.   Let's click in that area.
2   Q.   Do you want me to click on schools,
3 directories and church histories or on more?
4   A.   On schools, the schools line there would
5 be great.
6   Q.   Okay.
7   A.   And this would search all the collections
8 that are in that subcategory, but on the right there
9 you can see under feature data collections the U.S.
10 school yearbooks 1900 to 2016 collection, so let's
11 click on that.
12   Q.   All right.
13   A.   Now we're brought to the page that we
14 looked at previously, which is the search page
15 specifically for this collection.
16   Q.   So why don't we conduct a search through
17 here and then I want to go back to the main search page
18 and conduct the search through there and narrow, but
19 first of all, let's do the search on the main yearbooks
20 search page. So if it's okay with you, why don't we
21 search for one of the named plaintiffs in this case?
22   A.   Okay.
23   Q.   So let's do Mark. So I typed in the first
24 name, and Sessa, which I'm typing into last name.
25 Should we be adding any additional information to this

43 (Pages 166 - 169)
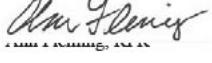
CONFIDENTIAL

Page 170

1 search to help us narrow it down?

2   A.   Entered like this it would be looking

3 across the entire collection so geographically across

4 the whole U.S., for example, so you may narrow it down

5 by lived in, you can include the state they live in for

6 example.

7   A.   We will do Nevada, Nevada U.S.A. All

8 right, and then click search?

9   A.   Click search.

10   Q.   All right. So at the top of this search

11 results list, looks like it returned 29 records. I see

12 four in Nevada U.S.A. for Mark Sessa. Do you see that?

13   A.   I do.

14   Q.   And then do the hover over view record.

15 Does this pop-up when you hover over view record appear

16 to be consistent with the screenshot we looked at in

17 the complaint earlier today?

18   A.   It does.

19   Q.   It includes a button for sign up now,

20 correct?

21   A.   Correct.

22   Q.   And if I click sign up now, I'm gonna go

23 ahead and do that and you testified earlier that that

24 would take me to a page with subscription information,

25 correct?

Page 171

1   A.   Yes, it takes you to the page that

2 outlines the various subscription packages available

3 that, in addition to other things, could provide access

4 to look at the yearbook collection further.

5   Q.   All right. So I clicked on that sign up

6 now and it shows the U.S. discovery, world explorer and

7 all access subscription options. Okay, I'm gonna go

8 back to our search results for Mark Sessa. All right.

9 If I hover over the -- there's no pop-up for hovering

10 over the picture icon; is that right?

11   A.   Could you reload the page?

12   Q.   Yeah. Is there supposed to be a pop-up

13 there?

14   A.   I'm just trying to recall myself. Hover

15 over view record, if you would.

16   Q.   And there's the pop-up.

17   A.   Maybe a recent change, but yes, as we

18 looked at before, sometimes there's a hover available

19 over that image as well -- or that image icon as well.

20   Q.   Okay. So I'm going to try to click on an

21 image to see what image is associated with this Mark

22 Sessa record. Does that make sense?

23   A.   Okay.

24   Q.   All right. And can you describe what's

25 returned when you -- or where you're redirected when

Page 172

1 you click on that picture icon?

2   A.   Sure, again, takes you to the same page to

3 help them understand the options for subscribing for

4 the service where they can view yearbook records

5 further and all the other services of the site.

6   Q.   Okay. I've taken us back to the search

7 results page for the yearbook search for Mark Sessa.

8 Is there any other functionality on this page that we

9 can look at?

10   A.   No other functionality. Again, just the

11 purpose of the page is to help the user understand the

12 types of things that they can discover and that there

13 are potential matches for people they're interested in

14 and then lead them to an explanation of how they can

15 subscribe for the services to explore further.

16   Q.   Okay. And if I want to go back to the

17 main search page, where would I click?

18   A.   If you click on the left on all

19 categories, do you see that there? And it removes the

20 filter of schools and school lists and would bring us

21 back to searching of all the collections, so let's try

22 that.

23   Q.   Okay. Clicking on all categories. All

24 right. Can you explain what this search result screen

25 is showing?

Page 173

1   A.   Sure. We went to it a different way,

2 again, through the yearbook search, but this should now

3 be searching all the collections that we have that are

4 potential matches for the search terms, which are Mark

5 Sessa, as you entered them.

6   Q.   And do you see this part my mouse is

7 circling, it has broad, exact and it has buttons you

8 can drag?

9   A.   Uh-huh (affirmative).

10   Q.   Can you explain what that is, please?

11   A.   Well, sure. We're making our best attempt

12 to try to find the best matches, the closest matches to

13 the name, dates, other information that you entered as

14 part of the search. These levers or dials simply allow

15 the user to kind of choose to be more specific or less

16 specific to tune that search to tune the results.

17   So if you took the dial on Sessa, for

18 example, and made it more broad, it would look for

19 other spellings and names that are close to that, for

20 example and, so, it's simply a tuning mechanism. The

21 same thing with the location.

22   Q.   Understood. All right. I'd like to start

23 over with a new search and we can search for Anthony

24 Sessa's name and just go about it a different way. If

25 I wanted to get back to the main search page, do I

44 (Pages 170 - 173)

CONFIDENTIAL

Page 174

1 click search at the top again?
2   A.   You can just click search and all records
3 from that drop-down box or drop-down list there, all
4 collections.
5   Q.   All collections. Okay. So this time
6 let's search for Anthony Sessa in Nevada and if I click
7 search here, does that search all collections available
8 on Ancestry?
9   A.   Yes.
10   Q.   I'm gonna click that. So this appears to
11 be a list of search results, correct?
12   A.   It does.
13   Q.   From here how would a user narrow to
14 yearbook records if they were interested in that?
15   A.   So the yearbook yearbooks and school
16 records are found here in this navigation under
17 directories, right there, uh-huh (affirmative).
18   Q.   Okay. I've expanded that.
19   A.   And then you see towards the end of that
20 list school lists and yearbooks?
21   Q.   Yes. Should I click on that?
22   A.   Sure. And, again, this is for a variety
23 of collections there at the top, you see the U.S.
24 school yearbooks 1900.
25   Q.   Okay.

Page 175

1   A.   That is the one opened as we've been
2 discussing.
3   Q.   All right. I'll click on that. And at
4 the top of that search result there are a bunch of New
5 Jersey and Anthony Sessa's. What's the best way to get
6 to a Nevada Anthony Sessa?
7   A.   One of the things you could do is use the
8 dials at the top left, you see any Nevada U.S.A. and
9 move that exact.
10   Q.   I will do that and click apply?
11   A.   Yes, and click apply and now we're
12 filtered uniquely on Nevada location matches.
13   Q.   Got it. So no Anthony Sessa's returned in
14 this search.
15   A.   No, you see that the dials for Anthony and
16 Sessa are set more broadly so, again, we're looking for
17 alternate spellings or close matches and this is what
18 we're finding.
19   Q.   Understood. Okay. But under -- and when
20 the search results are reached this way when you hover
21 over view record, what appears?
22   A.   This is what appears, a thumbnail image of
23 the page, just so users understand there is a page to
24 be seen and more detail to be explored, a list of some
25 of the field of information that we might have for that

Page 176

1 record and then a link to sign up, which takes you to
2 the options for a subscription package.
3   Q.   And again, if I clicked on the image
4 thumbnail here, what would happen?
5   A.   The same, you'd be taken to that same
6 page.
7   Q.   The page for the subscription information?
8   A.   Yes.
9   Q.   All right. I think that is it for
10 creating that exhibit. We can stop that. I will stop
11 my share.
12   (Exhibit 19 marked)
13   Q.   All right. Mr. Godfrey, I don't have any
14 further questions for you. I appreciate your time
15 today.
16   A.   Thank you.
17   MR. BAUMANN: Some confidential documents
18 were used today, so do we want to agree now on the
19 record to designate this as confidential? I can't
20 recall exactly what the PO says about that.
21   MS. BORRELLI: We can treat it as
22 confidential until you have time to review it, yeah,
23 that's fine.
24   VIDEOGRAPHER: The time now is 3:33 p m.
25 We are off the record.

Page 177

1   (Proceedings concluded 3:33 p.m.)
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45 (Pages 174 - 177)

CONFIDENTIAL

Page 178

1   REPORTER'S CERTIFICATE
2
     STATE OF UTAH   )
3   ) ss
     COUNTY OF WASHINGTON)
4
5   I, Ann Fleming, Registered Professional
     Reporter, do hereby certify:
6
         That prior to being examined, the witness,
7   Todd Godfrey, was by me duly sworn to tell the truth,
     the whole truth, and nothing but the truth;
8
         That said deposition was taken down by me
9   in stenotype on October 5, 2022, at the place therein
     named, and was thereafter transcribed and that a true
10   and correct transcription of said testimony is set
     forth in the preceding pages;
11
         I further certify that, in accordance with
12   Rule 30(e), a request having been made to review the
     transcript, a reading copy was sent to Mr Baumann for
13   the witness to read and sign, and the original
     transcript will be delivered to Ms Borrelli for
14   safekeeping
15   I further certify that I am not kin or
     otherwise associated with any of the parties to said
16   cause of action and that I am not interested in the
     outcome thereof
17
         WITNESS MY HAND this 20th day of October,
18   2022
19
20   [signature: Ann Fleming]
21   Ann Fleming, RPR
22
23
24
25

Page 179

1   Veritext Legal Solutions
                1100 Superior Ave
2   Suite 1820
                Cleveland, Ohio 44114
3   Phone: 216-523-1313
4
     October 21, 2022
5
     To: John Wall Baumann, Esq.
6
     Case Name: Sessa, Anthony, et al. v.
7   Ancestry.Com Operations, Inc., et al.
8   Veritext Reference Number: 5506185
9   Witness: Todd Godfrey, 30(B)(6)   Deposition Date: 10/5/2022
10
     Dear Sir/Madam:
11
12   Enclosed please find a deposition transcript. Please have the witness
13   review the transcript and note any changes or corrections on the
14   included errata sheet, indicating the page, line number, change, and
15   the reason for the change. Have the witness' signature notarized and
16   forward the completed page(s) back to us at the Production address
     shown
17
     above, or email to production-midwest@veritext.com.
18
19   If the errata is not returned within thirty days of your receipt of
20   this letter, the reading and signing will be deemed waived.
21
     Sincerely,
22
     Production Department
23
24
25   NO NOTARY REQUIRED IN CA

Page 180

1   DEPOSITION REVIEW
     CERTIFICATION OF WITNESS
2
         ASSIGNMENT REFERENCE NO: 5506185
3   CASE NAME: Sessa, Anthony, et al v
             Ancestry Com Operations, Inc , et al
         DATE OF DEPOSITION: 10/5/2022
4   WITNESS' NAME: Todd Godfrey, 30(B)(6)
5   In accordance with the Rules of Civil
     Procedure, I have read the entire transcript of
6   my testimony or it has been read to me
7   I have made no changes to the testimony
     as transcribed by the court reporter
8
     _____
9   Date   Todd Godfrey, 30(B)(6)
10   Sworn to and subscribed before me, a
     Notary Public in and for the State and County,
11   the referenced witness did personally appear
     and acknowledge that:
12
         They have read the transcript;
13   They signed the foregoing Sworn
             Statement; and
14   Their execution of this Statement is of
             their free act and deed
15
         I have affixed my name and official seal
16
     this _____ day of_____, 20____
17
     _____
18   Notary Public
19
     _____
     Commission Expiration Date
20
21
22
23
24
25

Page 181

1   DEPOSITION REVIEW
     CERTIFICATION OF WITNESS
2
         ASSIGNMENT REFERENCE NO: 5506185
3   CASE NAME: Sessa, Anthony, et al v
             Ancestry Com Operations, Inc , et al
         DATE OF DEPOSITION: 10/5/2022
4   WITNESS' NAME: Todd Godfrey, 30(B)(6)
5   In accordance with the Rules of Civil
     Procedure, I have read the entire transcript of
6   my testimony or it has been read to me
7   I have listed my changes on the attached
     Errata Sheet, listing page and line numbers as
8   well as the reason(s) for the change(s)
9   I request that these changes be entered
     as part of the record of my testimony
10
         I have executed the Errata Sheet, as well
11   as this Certificate, and request and authorize
     that both be appended to the transcript of my
12   testimony and be incorporated therein
13   _____
     Date   Todd Godfrey, 30(B)(6)
14
         Sworn to and subscribed before me, a
15   Notary Public in and for the State and County,
     the referenced witness did personally appear
16   and acknowledge that:
17   They have read the transcript;
         They have listed all of their corrections
18   in the appended Errata Sheet;
         They signed the foregoing Sworn
19   Statement; and
         Their execution of this Statement is of
20   their free act and deed
21   I have affixed my name and official seal
22   this _____ day of_____, 20____
23   _____
     Notary Public
24
     _____
25   Commission Expiration Date

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46 (Pages 178 - 181)

CONFIDENTIAL

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                                                    Page 182
 1          ERRATA SHEET
        VERITEXT LEGAL SOLUTIONS MIDWEST
 2        ASSIGNMENT NO: 5506185
 3 PAGE/LINE(S) /      CHANGE      /REASON
 4 _____
 5 _____
 6 _____
 7 _____
 8 _____
 9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19

   _____    _____
20 Date          Todd Godfrey, 30(B)(6)
21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
22 DAY OF _____, 20_____ .
23       _____
           Notary Public
24

         _____
25         Commission Expiration Date
```

CONFIDENTIAL

[& - 250,000]   Page 1

&	**118** 3:25	**1900** 169:10	164:8 169:10

&

& 2:3,12,15 5:19 5:21

0

02292 1:10

1

1 3:8 9:22 10:23 10:24 11:1,18,20 12:3 23:11 63:2 76:24 94:15 120:16,22 122:11
1.6 103:8,8
10 3:8,20 36:21 59:20,24 108:8,9 108:12 110:2 133:2 135:23
10,000 71:14
10/31/2017 93:15
10/5/2022 179:9 180:3 181:3
100,393 111:6
101 3:19
102 2:7
108 3:20
10:20 36:24
10:53 56:5
10:54 56:8
10th 2:12
11 3:21 111:11 111:12,18 138:1
1100 179:1
111 3:21
11201 2:8
113 3:23

118 3:25
119 4:1
11:50 88:9
12 3:23 60:8,10 113:8,9,14 116:13,20 146:11
124 4:3
1265 165:13
13 3:25 61:7,8 62:15 80:12,15 118:19,20 148:15
13.00 97:22
136 4:4
14 4:1 23:5 51:6 62:18 119:21,22 120:5,17 121:21 123:25 124:8,22 154:13
140 4:5
14th 112:2
15 4:3 33:5 124:14,15 166:16
15,000 71:14
153 2:20
16 4:4 136:6,8 164:22
165 4:6
17 4:5 140:6,7,9
176 4:7
18 4:6 165:1,2
1820 179:2
1836 86:9
19 4:7 167:10 176:12

1900 169:10 174:24
1900-1999 64:16
1961 95:20
1969 86:9
1:39 125:1
1:49 125:4

2

2 3:10 4:1 28:20 28:21 56:11,12 56:14,16 57:21 58:9 59:21 83:22 95:10,10 113:23 120:19 120:23 122:10 122:12 142:1
20 180:16 181:22 182:22
20-30 66:9
2007 70:18
2007-2008 19:14
2008 19:1,6,15 70:18
201 2:4
2010 4:5 120:14 120:22 143:12
2010's 90:6
2013 93:17 94:5 94:11 98:1 106:24 107:8 120:17,22
2016 35:19,23 36:2 52:14,17 60:24 73:16 74:6 87:14 90:17 91:21 92:2 127:11

164:8 169:10
2017 94:6
2018 86:9,10 103:10 106:25 120:18,23 123:20
2019 112:2,10
2020 103:10
2021 113:17
2022 1:19 5:4 113:25 117:16 178:9,18 179:4
2023 113:25
2024 113:25 117:8
2025 113:25 117:8,16
20th 178:17
21 179:4
213 2:13
214 101:18
216-523-1313 179:3
218 108:12
219 111:13
228 118:19
229 113:10
23 93:17
235,000 122:12 123:13
237-1775 2:5
24,738 136:20
240 93:3
244 136:7
245 119:23
247 124:16
250,000 71:1

CONFIDENTIAL

255 83:18
26847 178:20
27 57:4,5
29 170:11
29th 113:17
2:20 1:10
2:54 166:10

3

3 3:11 28:20,23
  62:21,23,25
  63:10,13 97:5
  98:22 99:19
  124:8,19,21
  139:5 141:1,18
  143:18
3.com. 23:23
30 1:3 3:9 9:1,4
  9:14,22,22 11:20
  12:14,17 15:7
  166:16 178:12
  179:9 180:4,9
  181:4,13 182:20
30,000 33:22,24
30th 103:10,10
31 60:4
347 2:8
3:18 166:13
3:33 176:24
  177:1
3rd 120:17

4

4 3:12 36:7,7
  37:2 64:2,3,4,10
  64:12,18 65:1
  103:6 129:3
400 95:19

44114 179:2
443-3000 2:13
47,924 122:4
4th 73:7

5

5 1:19 3:13 66:3
  66:11 73:1,3,4
  77:5,25 106:21
  107:13 118:1,10
  178:9
5,000 122:13
  123:5,14,15
5.00 86:11 88:20
  88:21,25 89:12
5.00. 86:10
53703 2:4
5506185 179:8
  180:2 181:2
  182:2
555 2:16
56 3:10
597.790 142:1
5th 2:16 5:4

6

6 1:3 3:3,9,14
  4:5 9:1,4,14,22
  11:20 12:14,17
  15:7 64:6 66:4
  66:19 79:20,21
  79:22 80:2,4
  166:16 179:9
  180:4,9 181:4,13
  182:20
608 2:5
613 2:4
62 3:11

64 3:12
645-0464 2:8
650 2:17
699 165:3

7

7 3:16 12:3
  83:12,16,17,23
  83:24 88:18
  119:20 125:7
  127:20
700 86:10
716 140:6
73 3:13
79 3:14

8

8 3:17 36:7,11
  37:2 92:24 93:1
  93:2,7,9,25
  94:15 97:11
  98:25 99:14
  101:3 102:4
800 2:20
801-5000 2:17
80s 110:18
83 3:16
865 2:12

9

9 3:19 57:21
  58:3,8 65:5
  101:15,16,17,21
  102:3 104:2,6
  106:22,25
  107:15 108:3,21
  109:25 111:9
  112:4 127:21
90017 2:13

90s 110:18
93 3:17
94065 2:16
94107 2:20
9:04 1:19 5:4
9:10 10:17
9:14 10:20
9:17 11:12
9:19 11:15

a

a.m. 1:19 5:4
  10:17,20 11:12
  11:15 36:21,24
  56:5,8 88:9
abbreviated
  95:22
ability 92:16
  150:6
able 48:9 54:12
  54:18 68:3,10
  89:14 91:16
  92:18 97:18
  102:12 109:16
  143:13
abraham 2:23
  5:21
access 10:4 11:8
  22:23 23:7 24:3
  30:2,4 33:2 34:6
  37:7,10 41:6,10
  41:13,14 44:13
  45:10,15 47:11
  48:2,9 49:12,14
  58:1,21 59:3,4
  63:12 64:17
  65:20 69:22
  78:14 80:8

CONFIDENTIAL

[access - agreeing]   Page 3

121:23,24 171:3
171:7
accessed 39:12
accessible 37:22
accessing 45:5
accomplish
149:25
account 21:8,10
57:12 132:16
137:21 156:6
accounts 133:3
135:25
accurate 58:4
129:19 162:19
acknowledge
180:11 181:16
acknowledging
116:8
acknowledgm...
114:4
acquire 28:3
69:12 83:9
89:10 91:2
102:13 118:4,25
119:3,7 123:6
155:3
acquired 67:8
69:17,19,23
70:10 81:9 82:8
87:10 91:22
117:19 123:21
132:2
acquires 90:2
acquiring 16:3
70:15 86:25
91:6 94:21
102:9

acquisition
14:11 15:11
17:11,21 18:17
28:2,6 35:4
99:13 119:8
act 180:14
181:20
action 3:10 6:16
9:9 56:14
178:16
activities 28:22
activity 35:12
actual 62:11
158:2
ad 44:3
add 27:25 53:21
71:8 77:13
89:13,17 91:10
97:19 102:13
103:7 107:24
119:7 130:9
161:19
added 43:19
51:15,18 66:18
71:12,17 89:11
103:14 114:13
addendum 3:17
3:19,21,23 93:10
94:1,2,8,10,19
100:15,21
101:24 102:4
108:7,18,20
109:10,24
110:10 111:9,14
111:25 112:7,14
112:17,25
113:11 117:20
117:20,24 118:7

119:8,15,20
addendums 94:3
94:4 98:8 102:7
102:11 107:5,6
112:18 113:2
116:9 117:22
adding 114:20
169:25
addition 80:12
99:7 107:12
116:2 143:19
171:3
additional 76:12
93:11 94:12
95:8 102:10,13
113:23,24 116:3
169:25
address 133:4,9
135:9,18,18
136:1 179:16
addresses 136:2
137:6
adds 41:14
advertise 41:17
41:20
advertisements
30:20
advertising 36:9
43:21
advice 14:25
103:18,20,23
147:12
affect 59:18
116:3
affirmative 7:7
41:11 117:3
173:9 174:17

affirmatively
51:6 151:14
affixed 180:15
181:21
afternoon 88:14
age 160:9
agency 126:24
agent 143:20
144:11
aggregate 99:5
134:20
aggregated
68:25
aggregating
90:12 92:8
aggregator
82:14 91:5
123:11
aggregators
69:19 82:8,18
86:23 87:1,4
88:17 90:22
92:8
ago 43:6 74:3
98:12
agree 5:10 9:20
22:4 34:4,14,21
37:6 41:4 44:11
45:24 78:5 83:5
89:16 98:21
99:11 146:15,19
147:2 150:12,23
151:2 154:16
158:4 176:18
agreed 115:14
162:7
agreeing 46:1,10

CONFIDENTIAL

[agreement - ancestry]

agreement 3:18	**ahead** 7:23 44:1	16:20 17:2,9	97:8 98:23
3:19,22,24 4:2	107:19,22	18:13,23,25	99:24 100:22
75:8 77:2 93:11	112:23 124:5	19:15,20 20:6,15	101:4,5,18
93:13,16,18,22	129:12 143:6	20:18,21 21:8	102:15,18,23
93:23,24 94:9,10	147:18 170:23	22:17 23:12,16	103:14,15,25
94:11,18,22	**aide** 2:15	24:9,13,21,25	104:23 105:1,6
97:11 98:1,24	**akin** 44:10	25:15 26:7 27:1	105:19,22
99:14,18,22	**al** 5:13 179:6,7	27:10,25 28:17	106:10,23
100:3,7,15 101:2	180:3,3 181:3,3	28:25 29:4,10,16	108:12 110:20
101:4,25 102:7	**algorithm** 55:4,7	30:19,22,25	111:13 112:1,3
103:7,11,15	162:9,11	31:20 32:8,17	113:10,23 114:1
104:1,5,8 106:24	**alleges** 145:13	34:5 36:11 38:8	114:10,11
107:7 108:22	**allow** 173:14	38:11,12 39:4,18	115:13 116:3,21
110:4 111:14,21	**allows** 37:18	40:8 41:17,20	118:9,11,19
112:1 113:12,19	**alternate** 175:17	42:25 43:9,22	119:23 120:10
113:21 114:1,12	**alternatives**	44:16,16,18 51:8	120:23 121:2,20
114:13 116:19	104:23	52:19 56:15,22	122:4,11,14,22
117:15 119:20	**amended** 3:23	58:5,17 60:24	123:6,13,16,21
120:4,7,13,21	103:7 113:11	63:2,14 64:6	124:2,10,16
121:18,19,20	**amendment** 4:1	65:5 66:12,19	125:13,15,24
122:3,23 123:1	120:16,18,22,23	67:1,16 68:2,7	126:5,7,15 127:2
123:12,23,24	**amount** 66:19	68:10,23 69:2,3	127:5 128:1,4,8
124:7 126:25	80:6 89:12	69:6,10,22 70:3	128:12,15 129:8
139:9 141:2	117:7,7 122:12	70:9,15,20 71:8	129:22 131:2,5
142:23 143:21	158:9	71:24 75:13,25	132:6,13 133:4,6
agreements	**analysis** 30:25	76:25,25 77:2,3	133:11,24 135:1
12:12 13:17	31:5,15,17,21,24	77:6,17,25 79:5	135:8,11,24
15:25 16:2	32:2,4,13	79:15,17 80:7,13	136:2,7 137:4
66:15 79:14	**analytics** 31:25	80:14,23 81:16	138:2,7,19,23
99:25 100:8	33:8	81:19,25 82:17	139:6,8,8,20
102:2 107:9,12	**ancestor** 51:21	82:20 83:4,6,18	140:6 141:1,25
119:10 120:15	53:22	86:11 87:3	142:6,22 143:4
120:25 127:3,6	**ancestor's** 52:4	88:16 89:1,17,18	143:14,15,18,24
127:10	**ancestry** 2:19	90:1,4,9,18 91:3	144:4,15,17,24
agrees 114:10	5:13,25 6:3 8:18	91:6,14,17,20	145:13,15,20
115:13 122:11	8:25 9:5,17	92:3,11,12,20	146:2,5 147:8
123:13	13:23 14:7	93:3,13,19 94:25	148:12,15,18,19
	15:16 16:15,19	95:3 96:5,16	148:21 149:2,13

CONFIDENTIAL

149:17,19,20,25
150:12,23 151:2
151:8,9,22 153:4
154:17 155:10
156:2,11 161:2,8
162:9 163:19
164:7 165:2
166:22 167:7
168:6 174:8
ancestry's 3:14
21:20 28:14,21
28:23 36:8
38:14 39:11
46:1 52:11
66:15,24 70:25
74:1,7,13 76:19
79:22 88:25
96:21 98:17
105:10 106:8
112:18 115:16
119:11 125:12
135:22 138:10
139:9 140:25
141:2,15 142:7
142:23 143:11
143:22,23
145:11 146:11
148:19 166:17
168:15
ancestry.com
1:6,6,8,9,11,12
2:21 16:18,21,22
16:23,23 19:2,9
19:22 20:3,22
22:4,7 23:20
24:3,6,10,16,18
26:4,22 29:1,17
29:20 30:14,21

34:6,15 35:2,20
36:3 37:4,10,17
37:25 38:20
41:18,21 44:12
45:19 64:17
73:6 78:2 79:2
92:22 114:25
125:15 126:7,9
126:17 138:9,18
145:23 148:17
166:17,23
167:15,25 179:7
180:3 181:3
ancestry.com's
24:22
ancestry.com.
1:7 16:14,16
28:25 36:15
40:1 78:4
140:16
andrea 1:25 5:14
167:2,10
angeles 2:13
ann 1:23 6:4
101:10 147:22
178:5,21
annual 41:2
114:5
annually 40:23
102:12
answer 7:2,16
7:22,23 9:16,17
15:2 27:20
31:18 46:5
57:14 75:22
77:11,19 80:10
97:1,14 100:20
103:21 104:16

107:19,22,25
124:5 130:20
142:25 143:1,2,7
143:8 147:15,18
148:11
answered 143:6
answering 9:5
answers 9:3
anthony 1:3 5:12
55:18 146:3
154:16 155:7
156:1,5,10 157:4
157:12,23
158:16 159:17
160:22 162:24
173:23 174:6
175:5,6,13,15
179:6 180:3
181:3
anticipate
164:11
anyway 114:5
anyways 109:1
apart 75:21
api 115:14
apologies 127:24
appear 9:8 43:16
58:3 59:1,5,6,25
61:9 62:15,16
65:6 73:11,14
88:19 112:11,12
123:18 145:22
153:16,20 154:8
154:9 159:21
167:24 168:21
170:15 180:11
181:15

appearance 5:16
46:16
appeared 154:15
159:18
appearing 138:8
appears 48:22
58:9,11 59:21,23
63:6 64:13
80:20 93:12
99:19 110:19
116:12 118:24
131:8,10 132:22
136:11 153:5
167:15 174:10
175:21,22
appended
181:11,18
appendix 124:8
124:18,21
apply 139:13
175:10,11
appreciate
176:14
approximate
19:12 128:2
approximately
13:1,5 71:11
april 106:25
120:17,22
archival 96:10
archive 114:18
127:3 144:21
archived 126:14
archives 17:11
70:7 123:9
125:22 126:11
126:18 127:7

CONFIDENTIAL

[archives.com - backing]   Page 6

archives.com
  23:24
area 35:5,10
  141:8 169:1
areas 9:21 29:7
  129:16
arrived 86:14
articles 76:7
ascribe 89:6
asked 7:17 8:25
  9:8,15 88:18
  89:5 117:13
  127:24 142:12
  151:1 156:1
asking 33:7
  47:17 77:15
  140:22 141:3,14
  142:8,13,24
  148:5,10
asks 75:17 139:6
  147:12
aspects 142:18
asserting 142:22
assertions
  142:14
assignment
  180:2 181:2
  182:2
associated 29:5
  29:10,12,19
  30:14 35:2
  68:14 81:5,13
  84:14 95:14
  96:8 98:7 99:4
  100:3,9 108:18
  109:19 119:15
  119:19 126:19
  129:23 130:10

  132:15,24 133:3
  134:2,7,18
  135:25 147:9
  154:24 155:6,25
  158:14 160:23
  165:21 171:21
  178:15
association
  132:21 133:22
  136:5 137:24
  152:5 155:12
  164:14
assume 7:17
  25:17 84:15
  97:25 108:21
  109:12 112:2
  122:9
assuming 108:17
  119:1 165:20
assumption
  57:25 98:6
  119:19 121:23
atkinson 14:3,5
  14:7,18,21,25
  15:16 17:20
atkinson's 28:2
attached 110:3
  181:7
attempt 55:2
  158:2 173:11
attempted
  156:12 157:4,10
  157:23 158:4,16
  158:19 159:6
attendees 146:25
attorney 5:18
  7:20 75:19

attorney's
  143:21
attorneys 75:18
  103:18 147:17
  147:20 148:4,12
attract 25:8
attracting 36:14
audiences 32:10
audio 5:9
authorization
  137:15
authorize 181:11
automatically
  51:4
automation
  128:22
availability
  49:14 54:21
available 19:9
  21:14 22:11,12
  34:15 37:19
  38:20,25 41:23
  42:12 46:21,22
  46:23 50:13,19
  54:10 55:10
  57:25 59:3,22
  60:1,12 61:23
  62:1,9,12 63:25
  64:22 68:8
  72:10,12,13
  73:25 74:7
  82:12 87:23
  89:18 92:19,21
  105:1,5,7 114:20
  115:23 125:23
  126:2,3 151:20
  155:3 161:6
  164:5 171:2,18

  174:7
ave 179:1
avoid 7:9
aware 9:7 39:5
  40:10 42:13,22
  43:3,4 51:14
  75:24 93:23
  107:10 128:10
  139:2,4 145:7
  146:1 161:13
  166:3
awareness 44:10

b

b 1:3 3:6,9 9:1,4
  9:14,22,22 11:20
  12:14,17 15:7
  75:12 114:10
  166:16 179:9
  180:4,9 181:4,13
  182:20
back 9:20 10:21
  11:16 12:8
  27:16 36:25
  56:9 76:10 81:3
  84:5 88:13,15
  92:5 109:20
  110:15 114:10
  125:5 143:18
  147:23 155:17
  166:14 169:17
  171:8 172:6,16
  172:21 173:25
  179:16
background
  15:8 98:19
backing 40:2

CONFIDENTIAL

[banner - boy]

banner 42:11
43:14,15,21 44:3
banners 43:17
bar 150:7
barkhordar 2:23
5:21
base 136:16
based 40:21
58:20 79:12
96:22 99:16
111:1 137:5
162:4,12
basically 39:24
67:12 119:5
basics 135:20
basis 89:21
147:15 160:4,17
bates 62:25 64:5
65:5 83:17 93:2
108:12,20
111:13 113:10
118:19 119:23
140:6
baumann 2:11
5:24,24 7:20
9:12,25 11:4
12:7,25 13:2,10
14:19 36:16
46:3 49:25
74:16 75:16
77:8,18 84:22
87:16 91:8
92:14 96:24
97:12,16 100:11
100:19 103:16
107:19,21
109:14 112:22
124:4 127:17

130:8 139:17,23
140:17 141:12
142:10 143:3
146:6 147:4,11
148:5 176:17
178:12 179:5
beginning 5:17
76:20 114:22
behalf 1:4 5:20
5:22 8:25 9:17
93:13 164:18
believe 13:20
70:17 72:13,24
74:15 80:17
102:5 107:8,11
109:17 116:23
117:18 120:14
120:25 123:22
124:13,21 134:6
136:14 137:13
141:16 152:10
153:2 161:1
166:24 167:9
belongs 84:13
ben 2:9 5:21
benefit 156:8
benjamin 2:6,7
5:22
benosbornlaw....
2:9
bergen 2:7
best 32:18,23
52:5,22 53:2,9
53:24 54:6
67:24 75:9 79:7
79:9 128:20
132:8,11 136:14
149:8,12 150:6

153:21 155:23
160:5 162:3,10
162:12 173:11
173:12 175:5
better 15:8
beyond 15:19
58:23 59:16
76:17 115:10
145:10
big 165:6
bigger 57:7
biggest 98:9
billing 135:4,9
135:18,20 136:1
136:2,14,17,18
137:1
billion 33:5
birth 31:9 53:21
53:23 54:23
134:3
bit 19:25 63:5
71:1 81:2 95:12
132:20 140:4
164:3
biweekly 53:1
blurred 62:7
bnw 1:10
book 63:7 67:13
67:23,23 68:14
68:14,15,16
71:25 72:4,25,25
76:12 84:10,25
85:11 89:7,10
95:14,19,20,24
96:1,4 102:24
111:2 128:19,20
129:6,21 130:11
130:13,15,17

131:1 134:2
144:23 145:18
145:19
books 70:22 71:1
71:15 81:11,12
82:9,22 90:12
92:9 94:21 95:6
99:6 110:12,12
110:14,23
112:15 114:21
116:16 117:24
121:24 123:3
126:21,23 127:1
129:4 130:3
borrelli 2:3 3:3
5:19,19 6:13,15
9:19 10:2,15
36:19 74:10,20
87:13,18 100:4
100:13 101:10
109:8,20 124:24
127:14,19 130:6
134:1 142:21
147:22 148:1
167:2,9 176:21
178:13
boss 18:10
bottom 58:8
59:24 62:14
63:1 98:3 111:6
165:12 168:22
bought 81:25
bound 75:11,14
77:22
box 85:15,16
86:2 174:3
boy 149:18

CONFIDENTIAL

[brands - christinahenriquez]   Page 8

brands 24:19 30:17 41:15
break 8:1 10:19 11:14 36:18,23 37:3 66:7,7 88:11,15,15 125:3 131:15 166:12
breakdown 110:9
breaks 8:3 110:7 111:5
brenda 1:12
brief 122:1
bring 172:20
bringing 17:9
broad 20:25 173:7,18
broadest 90:11
broadly 146:24 175:16
brooklyn 2:8
brought 169:13
bucket 116:17
buckets 35:16
build 35:8
building 18:22 23:1 39:22 44:6 106:17,18
bunch 175:4
business 19:17 19:18,19 30:9,10 104:20 117:12 121:2
businesses 115:19
button 37:12 58:16,21 59:1,5

59:6,11,15 60:15 60:18,25 62:1 155:8 170:19
buttons 173:7

c

c 2:1,3 5:1 18:8 115:13 122:10
ca 179:25
calculated 117:11,21
california 2:13 2:16,20
call 22:8
called 6:9 9:1 16:16 32:4 41:9 86:8 90:20 121:13
calling 150:2
calls 20:7 46:4 75:17 77:9 91:9 92:15 96:25 97:13 139:18,24 140:17 142:20 146:6 147:4 152:19
camera 5:7
capabilities 72:4
capacity 103:24
capture 67:22,25 68:14
captures 21:1
card 135:7
careful 6:25
case 1:9 12:19 12:21 13:16,21 15:3,9,13,21 16:1,22 52:14

55:18 56:15,21 80:21 94:13 99:4 101:4 106:19 146:3 154:12 155:16 161:22 169:21 179:6 180:3 181:3
cases 45:17
cash 28:23
categories 28:2 35:1 39:17 40:16,18 41:5 51:11 64:21 83:10 116:1 133:4 145:10 168:17,18,20 172:19,23
categorizes 128:5
category 29:23 38:6 69:5 72:19
cause 178:16
caution 14:20
census 31:9 168:10
center 149:1
certain 54:14 60:20 66:17 96:1 103:4 122:19 152:22 160:11 163:5
certainly 34:22 80:19 137:20 159:15 161:4,9
certificate 54:23 134:3 178:1 181:11

certification 180:1 181:1
certify 178:5,11 178:15
cetera 68:12 168:10
cfo 28:11
chain 49:13 126:20
chance 26:13
change 105:11 105:14 171:17 179:14,15 181:8 182:3
changed 40:17 49:16 73:15,18 73:21 102:18,20
changes 179:13 180:7 181:7,9
channel 35:11
channels 27:13 35:11
chat 11:9
check 114:17 119:11
checked 11:6
checking 119:5
chief 27:5
child 149:10
child's 150:8
children 149:3
choose 64:19 104:23 173:15
christina 2:15 6:1
christinahenri... 2:17

CONFIDENTIAL

[church - communicates]

church   168:23
  169:3
circling   173:7
circumstances
  52:2
city   54:16 84:15
  84:16
civil   180:5 181:5
claim   75:9
clarified   89:7
clarify   22:14,19
  23:17 43:17
  44:20 49:18
  66:25 68:13
  81:23 97:2
  108:17 141:14
  166:5
clarity   20:25
  108:24 110:17
class   3:10 56:14
  115:3 131:10
  138:6 142:2
  143:19,25
  144:16,25 145:5
classmates   14:15
  66:17 83:1
  90:14,19 92:12
  96:14 97:9
  98:18,23 99:5
  110:24 115:1,19
  121:8
classmates.com
  105:8,22 114:11
  114:23
clean   43:22
  164:3
clear   81:21

clearly   41:25
cleveland   179:2
click   37:12 44:25
  48:5,13,13 50:5
  60:18 65:18
  83:19 154:23
  167:20,23 168:7
  168:11,12 169:1
  169:2,11 170:8,9
  170:22 171:20
  172:1,17,18
  174:1,2,6,10,21
  175:3,10,11
clicked   49:21
  58:10 61:25
  63:20 65:12
  171:5 176:3
clicking   50:3
  59:10,14 172:23
clicks   50:15
client   75:19
close   53:14
  173:19 175:17
closest   173:12
cloud   35:6
club   131:11
clvs   1:25
code   135:6,9,10
  135:18,21 136:4
  137:2,3
codes   136:23
coffee   36:20
cohort   33:25
collaborate
  134:13
collaboration
  23:1,3 30:7
  39:21 106:18

collaborations
  82:25
colleagues   115:4
collect   133:6
  135:2,6,12
collection   21:23
  33:23,23 37:16
  39:16 40:4,9,11
  40:14 41:6,8
  42:12 45:20
  47:1,14 52:12
  54:9,11,20 55:1
  55:5,14,20 64:14
  64:24 66:5,24
  67:2,22 68:6,18
  68:23 69:4,11,22
  70:16,25 71:9,12
  72:5,12,15,17,20
  78:10,22 79:1
  81:10,15,17 82:2
  82:13,16 85:1,5
  85:18 89:11,13
  89:19 91:13,17
  92:10,21 95:1
  97:19,20 106:9
  110:22 114:8
  117:23 122:17
  125:25 128:1,9
  128:11,15 131:4
  134:11 139:1
  144:22 145:22
  145:25 149:22
  150:11 151:16
  151:20 156:3
  159:1 165:13,19
  168:15 169:10
  169:15 170:3
  171:4

collections   19:13
  31:12 33:18,22
  37:14 54:7 69:6
  69:23 70:23
  104:19 114:15
  133:11 134:12
  149:11 168:10
  168:12 169:7,9
  172:21 173:3
  174:4,5,7,23
collects   136:2
column   84:11
  119:4
combined   67:13
come   21:2 33:21
  36:1 64:24
  70:13 76:2 85:6
  85:14,18 95:19
  97:17 98:13
  114:21 121:2
  123:6 126:21
  130:3,19 133:14
  152:9,14 155:17
  160:21 161:17
  162:16 163:23
comes   32:20
  57:11 72:3
  103:17 131:20
  131:22
coming   78:16
  116:10
commission
  180:19 181:25
  182:25
common   54:15
  90:1
communicates
  153:18

[communication - continues]   Page 10

CONFIDENTIAL

[continuing - database]   Page 11

continuing 33:1	47:19,24 49:23	109:23 147:13	**creating** 35:5
continuously	52:13 59:22	147:13,14	159:25 176:10
102:9	63:7 67:18,19	**count** 86:10	**creator** 74:24
contract 108:2	76:22 78:9,20	128:2 129:6,19	**creators** 100:17
112:17 119:14	82:18 86:21	129:24 130:1,2,3	107:16 108:4
120:10 142:14	89:19 90:2	136:17	112:20 124:1
contracting	91:17 93:13	**country** 99:10	126:7,16
102:16	96:8 98:1,25	**counts** 111:6	**criteria** 149:5,7
contracts 87:6,8	99:14,22 103:1	**county** 178:3	150:6 160:9
87:20 88:5	116:14 117:17	180:10 181:15	**crm** 53:12
101:5 126:10	118:17 119:13	**couple** 13:7	**current** 58:23
contribute 69:1	120:9 122:5	**course** 25:3 32:1	61:13,14 135:19
contributed	128:5 131:25	50:18 51:23	136:12,16
145:17	136:20 138:21	82:23 102:20	**currently** 21:3
conversation	138:22 139:10	**court** 1:1 6:4,23	34:23 122:14
9:13	139:11,15	7:6 8:11 26:14	135:6
conversations	150:14,20	101:13 127:16	**customer** 149:1
75:21,24 147:17	154:20 155:1,8	142:18 147:25	149:4 150:3,5
148:6,8,12,13	162:5,6,11 166:1	180:7	152:12,23 153:1
conversion 33:3	166:2 170:20,21	**cousin** 133:16	**cut** 107:20
33:10,18	170:25 174:11	**cousins** 23:3	**cv** 1:10
convert 32:18	178:10	134:14	
33:12,15	**corrections**	**cover** 6:21 25:19	**d**
cooperate 23:12	179:13 181:17	61:16	
coordination	**correspondence**	**covered** 164:22	**d** 3:1 5:1 84:2
110:17	12:9	**covers** 25:14	94:16 98:5
copies 91:21	**cost** 35:6 70:14	117:16	99:21 100:7
copy 178:12	88:25 89:9,12	**create** 53:22	**data** 39:4 81:4
copyright 75:12	91:2 98:10,10,14	66:24 67:1	115:14,15
75:12,14,15	98:17,19 99:4	86:16 95:8	120:11 137:1,14
76:16 77:2,5,16	**costing** 86:19	98:11 133:14,15	137:16 158:13
77:22,23 87:21	**costs** 35:4,6	133:16 167:3	158:13 159:3
corner 63:1	86:15 99:7,13	**created** 51:18	161:15,16 169:9
corporation 1:10	**cough** 101:8	67:7,13 75:6	**database** 24:23
1:11	**counsel** 5:16 6:2	159:23 160:7	27:19,25 29:6
correct 8:8 9:5	6:5 8:21 12:4,12	161:22 162:3,5	34:23 38:7 40:3
26:23 34:7,12	12:18,22 14:23	167:10	40:6 66:13,18
45:22,23 46:13	15:4 16:24		67:4,6,14 68:19
			69:16,20 80:6

CONFIDENTIAL

[database - difficult]

81:4,4 86:16,17
95:9 105:4
110:25 122:14
125:8 127:23
128:6 129:5
130:11,18
132:19 148:22
149:6 151:18
153:9 154:6
165:12,14 166:1
date 19:5,10
49:9 53:21
67:23 68:12,15
120:25 179:9
180:3,9,19 181:3
181:13,25
182:20,25
dated 93:15,17
120:16,22
dates 67:12
173:13
day 15:13 51:6
120:3 178:17
180:16 181:22
182:22
days 23:5 179:19
ddo 122:11
123:13,16
ddo's 122:14
deal 96:10
dealers 88:17
dear 26:19
179:10
death 31:9
decade 16:4
40:20 81:1
110:8 111:5,5
149:19 151:5

166:4
december 35:19
35:23 87:14
113:17 120:18
120:22,23
123:20 164:8
decide 114:1
162:17
decides 158:18
deciding 158:23
decision 51:2
dedicated 42:16
deed 180:14
181:20
deemed 179:20
defendants 1:14
2:10 16:22
defer 16:24
150:10
deferring 150:7
define 131:6
definitely 33:11
79:3
definition 70:8
definitively
162:23
degrees 130:13
delaware 1:11
1:12
delete 150:10
deleted 151:19
delivered 76:13
102:17 178:13
delivering
122:12 123:14
delivery 96:19
97:3 102:19,23
110:17

denial 152:3
denied 152:1
department
25:22 28:9,14
179:22
depending 71:13
71:15 99:8
105:14
depends 5:6
deposition 1:5
3:8 5:5,11 6:17
9:4,14,15 11:19
12:17,24 13:3,25
15:17,22 178:8
179:9,12 180:1,3
181:1,3
derived 28:24
78:20,22
describe 71:21
106:6 107:4
141:25 171:24
described 40:5
49:20 58:18
99:17 108:7
117:24 134:6
142:16 145:16
describes 48:15
60:5,21 62:4
142:16
describing 61:22
77:21 117:19
description 3:7
48:23
designate 176:19
desire 119:6
detail 47:11
65:20 71:18
175:24

detailed 118:10
details 12:19
99:17
determination
163:24
determine 32:17
52:19 100:23
115:15 135:24
136:23
determined
97:25
determining
98:9
developers 35:7
development
35:6
dial 173:17
dials 173:14
175:8,15
difference 42:23
46:20 81:23
different 22:17
33:20,22 34:2
35:11 40:8,18
41:12 42:18
46:17 49:17
50:2 58:18
61:12 74:6
79:12 83:8 85:5
105:25 106:2,3
113:21 115:8
173:1,24
differently 29:6
129:14
difficult 7:5,8
33:16 54:1,16,18
55:3 128:24
165:4

CONFIDENTIAL

[digit - duties]   Page 13

digit 82:16	**discovered** 25:9	**district** 1:1,2	**donating** 71:24
digital 4:1 67:16	159:13	**dive** 23:11	**donation** 69:17
86:3 91:21	**discoveries**	**dna** 29:23 30:8	71:22 73:13
94:13,13,23 95:4	27:14 31:11,12	35:13 59:8	74:14,23 75:7
97:23 98:11,12	32:22 33:25	106:19	76:1 77:1 79:6
103:12 113:24	38:16 41:24	**document** 11:23	91:24 92:6
116:4 118:6,8	43:18 104:22	56:25 62:25	126:12 145:17
120:11 121:18	134:16	63:3,13 64:5,7	**donations** 69:19
122:7,20,21	**discovery** 34:9	73:8,9 74:17	71:15 72:22
digitally 96:16	35:24 36:1	75:3 77:5,9,13	77:1
digitization	134:21 171:6	77:14,16,24	**donor** 75:4,13,15
17:12,22 35:4	**discretion**	79:24 83:17	77:25
69:25 92:1,17	117:10	93:2,4 98:4	**doubtful** 73:21
96:10 99:13	**discuss** 15:4,11	100:19 107:21	**download** 72:1
digitize 85:25	74:19 87:16	108:13,20 110:2	**downloaded**
89:1 97:19	104:17 127:17	112:22 118:21	73:6
digitized 67:17	**discussed** 9:19	120:17 124:4,12	**dozens** 54:17,17
82:21 86:4	12:18,22 14:22	124:16 136:9	158:20,21,22,22
102:14 110:24	14:25 30:18	139:24 140:8,11	**drag** 173:8
126:11	49:20 72:14	140:18 141:19	**drama** 131:11
digitizes 82:1	**discussing** 60:23	165:9	**drive** 2:16 31:2
direct 17:16	175:2	**documents**	96:16
directly 30:16	**discussion** 24:5	13:19 15:22	**driven** 33:3,9
151:9 152:6	33:9 56:7 76:21	16:5 79:11 81:3	**drives** 34:9
director 14:10	164:22	109:13,21	96:13,23 97:3
directories	**discussions** 32:3	113:18 114:2	**drop** 174:3,3
168:23 169:3	32:11 104:4,10	176:17	**due** 105:16
174:17	147:8,19 148:3	**docusign** 111:17	117:7,7
disagree 148:5	**display** 91:16	**doing** 32:23	**duly** 178:7
disclose 135:17	96:21 114:10	144:7	**duplicate** 84:18
135:20	138:9,20 145:14	**dolphin** 2:16	**duplicates** 119:6
disclosed 75:19	146:4	**donate** 69:3	119:6
discover 43:23	**distinct** 20:8	138:14	**duplicative**
49:1 89:22	**distinction** 91:1	**donated** 74:25	83:21 110:21
115:6 172:12	**distribute**	75:25 76:2,5,16	111:3
discoverable	117:25	79:16 80:13,20	**duties** 14:13
97:21	**distributed**	80:23 81:1	
	146:25	126:13	

CONFIDENTIAL

[e - example]   Page 14

e			
e 2:1,1 3:1,6 5:1	153:18 154:24	**enrolled** 51:5	**et** 5:13 68:12
5:1 18:8 84:2	166:22	**ensure** 110:20	168:10 179:6,7
90:21 92:12	**element** 46:8	114:6	180:3,3 181:3,3
108:22 109:23	134:23	**enter** 77:1 87:5	**evaluate** 89:8
120:11,24 121:3	**elements** 128:17	114:1	**events** 49:13
121:10,14,20	**email** 51:14,20	**entered** 93:19	**evidence** 127:2
122:4,15 123:21	52:10,20 53:15	94:5 102:2	**evolved** 61:4
124:2 178:12	54:10 55:15,21	106:24,25 107:7	**exact** 53:16,20
earlier 15:25	56:2 133:9	113:17 120:15	54:2 173:7
16:1 70:17	159:19 160:7,25	120:18 127:10	175:9
120:8 127:24	161:3,12,14,25	170:2 173:5,13	**exactly** 31:9,18
131:19 139:12	162:2,25 163:2,6	181:9	53:24 54:2,18
156:16 162:7	163:8,16 164:15	**entering** 102:6	67:21 95:3
170:17,23	164:16 165:15	103:11 104:1	121:19 176:20
early 19:13	179:17	126:25	**examination** 3:3
70:23 90:6	**emails** 36:12	**entire** 40:7 54:9	6:12
earns 34:5	51:8,10,12,13,24	128:10 153:23	**examined** 6:10
easiest 9:20	52:8 53:6 54:9	170:3 180:5	178:6
easily 85:23	55:1,6,12 125:10	181:5	**example** 21:11
effect 112:10	138:4 142:4	**entirety** 61:16	21:19 22:25
effective 88:2	154:15 163:15	**entities** 16:15	35:7 42:1,11
effectively 54:21	164:8,11,23	**entitled** 83:21,22	44:6 53:23
126:24 151:19	165:18,25	93:25 94:1	54:20,23 58:19
efficiencies	**emanuel** 2:12,15	113:10 120:18	59:3,9 63:16
98:13	5:25 6:1	143:2	64:20 69:14
efficient 44:9	**employed** 14:7	**entity** 16:16	75:5 76:6 79:13
98:15	16:17 18:13	**errata** 179:14,19	82:9,25 85:4
effort 53:13	19:16	181:7,10,18	86:1 87:5 90:25
80:25 130:22	**employees** 13:24	182:1	95:18,20 96:2
149:15 153:20	24:8,17,18,22	**esq** 179:5	100:2 105:3,13
155:23	**employer** 16:13	**establish** 98:16	106:14 115:21
efforts 75:9	**enclosed** 179:12	**establishing**	126:11 135:5
eight 16:12 28:5	**endeavor** 76:10	116:9	138:13 143:21
either 40:5 48:1	**ended** 92:9	**estimate** 129:9	144:21,23
77:21 84:19	**engaged** 82:11	129:19,22	152:22 153:24
125:21 145:9	**enhance** 23:2	**estimated** 88:25	157:4 170:4,6
148:25 150:2	29:24	**estimating** 118:3	173:18,20

CONFIDENTIAL

[examples - fair]   Page 15

examples 32:12
  49:9 90:15
  106:13 125:19
  138:11 140:3
  161:11
excel 3:16 83:12
exception 12:3
  126:10
exchange 4:1
  80:14 121:19
  123:17,19
excluded 55:1
exclusive 112:14
  116:17
exclusively
  105:5 106:5
exclusivity
  105:15,16,20
excuse 145:18
executed 181:10
execution 180:14
  181:19
executive 32:11
executives 23:14
exhibit 3:8,10,11
  3:12,13,14,16,17
  3:19,20,21,23,25
  4:1,3,4,5,6,7
  10:5,8,9,23,24
  10:25 11:1,18,20
  12:1,3 56:1,11
  56:12,14,16
  57:21 58:9
  59:20 62:21,21
  62:23,25 63:10
  63:13 64:1,2,3,4
  64:10,12,18 65:1
  65:5 73:1,3,4

77:5,25 79:19,21
  79:22 83:11,11
  83:16,17,23,24
  88:18 92:24
  93:1,2,7,9,25
  94:15,16,20
  97:11,24,25 98:4
  98:5,7,25 99:14
  99:20,21 100:2,7
  101:3,15,16,17
  101:21 102:3,4
  104:1,6 106:22
  106:25 107:15
  108:3,8,9,12,21
  108:22 109:11
  109:23,25 110:2
  111:9,11,12,18
  112:4 113:8,9,14
  116:13,20
  118:10,19,20
  119:21,22 120:5
  120:17 121:21
  123:25 124:8,14
  124:15,22 136:6
  136:8 140:6,7,8
  141:24 164:24
  165:1,2 167:3,4
  167:10 176:10
  176:12
exhibits 11:9
exist 55:19
  121:15 127:14
  152:25
existed 19:3 39:7
  143:12
exists 55:13
  161:16

expand 89:18
expanded
  174:18
expect 73:24
  74:2,5 85:20
  87:11
expectation 74:8
  160:1
expeditiously
  10:3
expenses 29:16
  35:1,14
experience 29:24
  32:16 42:21,22
  42:23 46:7
  47:15,17,21 48:3
  61:13,14,17
  147:5 158:10
experienced
  96:3
experiment
  52:21
experimented
  92:7
expert 115:1,11
expiration
  180:19 181:25
  182:25
explain 24:25
  128:15 136:13
  172:24 173:10
explanation
  41:25 172:14
explicit 140:23
  144:10 145:4
exploration
  115:22

explore 21:18
  43:24 160:21
  172:15
explored 175:24
explorer 171:6
expressed 127:8
  138:19 164:20
expresses 151:9
expression
  162:13
extent 14:21,24
  46:4 49:25 52:6
  54:3,8 55:18
  68:3,10 75:17,20
  77:8,9 91:8
  92:14 96:25
  97:12 103:17,19
  139:17,23
  147:12,15 152:8
external 96:13
  96:23
extract 81:4
  128:21
extracted 130:17

f

face 154:8
fact 9:22 96:22
  148:3,6,7 151:22
factor 98:9
factors 99:18
facts 75:20
  142:12,16,17
  143:3
factual 142:21
faculty 125:21
fair 7:18 20:4,15
  20:24 21:13

[fair - form]   Page 16

34:21 38:19
58:10 94:6
123:15
fairly 12:10
43:22 61:5 84:9
103:4 113:4
122:19 151:5
152:22 163:5
fallen 28:6
familiar 12:19
136:10 144:12
145:2 146:8
family 21:11,18
30:6 39:20
43:24 44:7
51:18,18 52:11
53:14,23 55:24
106:16,18,18
109:13 133:14
133:15,18,19,20
133:21,23,24
134:1,7,9,15,18
158:23 159:7,14
159:25 160:24
161:9,24 162:4
162:13,14
163:18
familysearch.c...
106:15
far 14:12 76:14
86:20 96:20
102:1 144:4,9
feature 44:8
169:9
features 35:8
43:19 44:2,6,10
44:12,14

fee 69:13,24
70:10,12 97:6
105:10,14,16,19
116:3,21 117:12
feel 9:23 35:25
103:21 153:19
fees 69:13 80:7
80:14 83:2
fewer 110:14,15
110:16
field 84:6,8,19
85:9 175:25
fields 46:21
48:23 49:9,10
50:12 54:24
60:11 61:23
63:23 64:25
fifth 3:21 111:14
111:25 112:7,17
figueroa 2:12
figure 54:5
file 100:12
files 11:6 67:16
85:8 94:13,17,24
96:5,15 97:23
103:12 113:19
113:24 116:5
118:6,8,11
120:12 122:7
filled 72:6,22
filter 38:5,6
64:23 72:19
80:18 128:6
137:3 168:19
172:20
filtered 64:22
136:15 175:12

filtering 37:15
filters 44:24
finance 25:12
28:9,13
financial 28:21
find 31:12 32:24
37:15 38:6,17
52:5 54:12 55:8
62:13 67:4 68:1
71:13 72:20
85:17 89:21
100:6 121:6
128:20 129:24
134:1,5,6 155:24
158:5 162:15
173:12 179:12
finding 78:12
145:25 160:20
175:18
fine 10:1 22:10
36:19 176:23
fingertips 71:5
finish 7:1
finishes 7:22
first 3:15 6:9,23
11:21 18:25
19:3,9,10 49:20
57:20,21 63:2,6
64:6,15 65:7
69:5 70:15,20
73:23 79:23
83:19,20 84:4
90:4 93:3,15,18
93:19,21,24 94:1
101:17 113:22
120:10,14 121:5
128:18 149:16
159:23 160:7

169:19,23
five 33:13 36:18
flag 100:5
fleming 1:23 6:5
178:5,21
floor 2:12,16
flow 50:2 164:23
166:17
focus 40:14
41:16 42:15
49:8 92:16 99:1
106:2 110:10
122:1 135:4
focused 24:15,17
27:20 43:22
87:25 91:11
106:3,4,5,16
116:7 119:4,19
130:14 152:4
158:9
fold 23:23
fold3 23:23
fold3.com 23:21
41:16
folder 11:4,8
109:19
follow 60:5
74:20 76:4
149:13
follows 6:10
103:8
forces4records...
24:1
foregoing
180:13 181:18
forget 31:7
form 3:12,13
31:15,23 64:13

CONFIDENTIAL

[form - go]   Page 17

71:25 72:6,10,22
73:11,15,25
74:12,14,23
113:4 152:9
formally 135:15
format 63:10
  65:10 86:7
  102:17 115:10
  115:14 122:18
formats 129:15
forms 32:2 76:1
formula 55:5
formulate 53:4
forth 178:10
forward 179:16
found 82:23
  159:1,3,13 161:8
  161:12 174:16
four 13:4,6
  99:20 108:16
  114:3 129:3,4
  170:12
fourth 3:19 65:4
  101:24 111:4,8
francis 1:25 5:14
francisco 2:20
free 9:23 15:1
  20:13,14,15,23
  21:6,16 22:12,14
  22:14,17,22,22
  23:4 31:14,22
  32:18,21 33:3,10
  33:14 35:25
  42:17,21 44:7
  45:21 46:5,19,22
  47:21 48:1,1
  49:15 50:7,10,15
  50:23,24 51:4,23

57:12,22,25 58:4
58:24 59:4,11,15
59:16,18 60:1
63:11,19 77:19
97:13 100:20
103:21 135:2,8
135:14,15
136:23,24
139:14 156:21
156:23 157:1,12
157:14,20
158:20 180:14
181:20
freeland 26:10
french 23:25
frequency 80:6
  102:12
friend 26:19
  133:16
front 167:14
full 16:4 22:1,23
  23:1 47:11
  50:16 57:25
  59:21,25 63:14
  118:15
fully 121:22
function 17:5,21
  26:23 28:6
  40:13
functionality
  25:6 26:4,5,21
  27:19 34:7,8,11
  47:23 68:9
  172:8,10
functions 35:18
further 46:9
  77:12 131:15
  144:15 171:4

172:5,15 176:14
178:11,15
future 115:25

g

g 5:1 84:2
garment 126:20
gathered 150:4
gathering 25:3
  79:8
gaudreau 84:1,3
  87:5 88:20 91:4
genealogy 29:22
  29:24 30:2,23
  31:1 60:22
  103:13 105:1
  106:4,4 114:15
  167:21,23,25
geneanet.fr
  23:25
general 23:2
  61:3 68:15 69:3
  76:11 86:24
  114:14,16 119:9
  137:24 149:10
generally 12:13
  17:4,9 64:7
  84:20 86:15
  118:11 138:15
  140:10 147:5
  156:5
generate 161:5
  161:25 164:16
  164:16
generated 53:6
  80:22 161:20
  163:11,20 164:4
  164:10

generic 54:14
geographic
  22:23
geographically
  39:19 40:21
  170:3
getting 18:18
  33:14 35:24
give 7:9 8:3
  10:13 38:19
  57:10 61:21
  62:10,22
given 14:22
  16:21 52:4
  54:16 57:24
  74:2 110:10
  114:17 123:12
  127:4 128:25
  129:21 131:1
  141:13 155:19
  157:11
giving 10:11
  77:25 87:22
  140:15
global 16:9 17:7
  17:15 18:12
  28:5 38:5 64:21
globally 40:14
gloria 1:11
gmn 1:10
go 5:10 6:22
  7:23 9:20,24
  10:10,15 11:10
  19:24 27:16
  36:20 44:1
  55:12,25 56:3
  57:8,16 71:25
  72:18 83:15

CONFIDENTIAL

[go - helping]

84:5 88:5,8
102:11 107:19
107:22 110:15
112:23 124:5,24
129:12 143:6
147:17 160:2
166:8 167:20
169:17 170:22
171:7 172:16
173:24
goal 91:15
162:19
godfrey 1:8 3:2
5:12 6:8,14,17
8:7,17 9:9,18
10:4,22 11:17,20
12:16 14:21
16:8 37:1 56:10
56:16 63:3 64:7
66:23 73:8
77:11 79:24
88:14 93:3
100:14 101:18
103:25 109:22
125:6 142:16
143:5,6 147:14
166:15 167:4,6
167:14 176:13
178:7 179:9
180:4,9 181:4,13
182:20
goes 42:16 55:5
96:12 97:9,22
165:6
going 5:3 9:13
10:22 11:25
14:20 16:19
36:6,16 37:1

56:10 62:21
66:6,9 75:16
81:3 83:2 84:6
97:16 103:16
124:12 125:6
151:3 158:24
160:12 166:15
166:25 167:13
171:20
gonna 11:17
28:20 56:1 57:3
57:19 58:7 60:3
61:7 66:3 108:8
141:18 143:17
170:22 171:7
174:10
good 5:3 6:14
8:6 22:9 36:17
52:7,7 54:12
66:9,11 88:14
162:22,22
gotten 123:10
government
123:8 126:24
127:7
governmental
70:7
governments
126:19
graduating
115:3
grandmother
163:25
granted 97:8,11
98:24 105:3
118:7 151:15
152:1,2 153:5,16

granting 77:6
grants 77:3,16
great 10:2 29:9
57:9 90:15
141:23 169:5
ground 6:22
groundings
109:1
grounds 142:20
group 20:20
22:6,9 24:15
26:25 31:11
86:25 131:16
153:6,16 154:3,4
154:8
groups 22:20
110:17
grow 114:8
guess 99:20
162:3
guesses 159:24

h

h 3:6 18:8,8,8
118:10
halfway 95:12
hand 63:1
168:21 178:17
handful 90:22
handle 153:4
handled 153:17
happen 176:4
happened 148:3
happening
110:13
happens 35:12
48:5

happy 7:13 8:1
66:5 74:19
99:14 112:7
hard 96:13,16,23
97:2
hardcopy 67:18
72:23 81:25
85:21 86:1 87:2
head 7:6,7 72:7
109:15,16
131:16 132:9
153:7
header 63:16
heading 75:7
healthcare 19:19
heard 5:8 75:18
84:24
heather 26:9
heeps 17:23
held 16:10 75:12
75:15 130:17
help 32:17 38:10
41:23 42:11
43:18 45:4,12
47:8 49:10,10
86:5 89:21
106:17,20
128:22 131:7
155:2 160:5,14
170:1 172:3,11
helped 121:24
helpful 33:14
53:3 57:10
109:8
helping 25:8,9
31:13 33:12
42:1 45:7 78:13
83:3

CONFIDENTIAL

[helps - include]   Page 19

helps 12:5 31:22 38:15 55:8
henriquez 2:15 6:1
hereunder 97:8
high 25:1 71:21 95:20 110:15
higher 98:12
highlight 129:16
highlighting 44:8
hint 51:8,10,12 51:13,13,20,24 52:10,20 53:6,15 54:9,10 55:1,6 55:12,15,20 159:18,22,24 160:6,7,11,24 161:2,12,20,25 161:25 162:2,8 162:22,25 163:2 163:5,7,15,16 164:8,11,15,15 164:15,16,17 165:15,18,25
hints 52:23 55:8 55:9,9,11 159:23 160:16,17,18 161:5,11 162:3 163:11,19 164:4 164:10 165:14
historical 13:17 106:17 166:4
historically 158:13
histories 168:24 169:3

history 12:20 16:4 39:21 43:24 106:19 155:15 156:7
hochhauser 18:2 18:7 28:11
hochhauser's 18:3
hold 76:16 77:23
holder 77:3,5,16 87:21
home 11:6 135:18
homepage 41:25 42:5 64:20
hon 1:11
honest 121:16
hope 160:18
hopefully 10:3 158:21
hoping 108:23
hosting 35:7
hour 8:3 36:17
hours 13:8
house 6:2 85:13 86:20
hover 48:17,20 48:21 49:2 50:4 50:5,14 61:18 62:1,7,15 65:21 65:24 155:7 170:14,15 171:9 171:14,18 175:20
hovered 61:9 155:5
hovering 58:13 171:9

howard 18:2,7 28:11
hr 25:17,18
huh 7:8 41:11 117:3 173:9 174:17
huh's 7:7
hundred 82:9
hundreds 92:8
hyphen 121:17

i

icon 171:10,19 172:1
id's 165:20,20
idea 84:8 119:14 165:8
identified 12:2 12:14 25:25 29:2 37:2 40:17 41:5 75:11 80:5 80:11 87:8 98:22 136:18 145:10
identifies 99:20
identify 9:21 80:23 81:13 90:9 97:10 99:5 124:9 132:23 134:17 136:12 139:19 140:13 141:24 143:13 153:21 159:6 160:3 162:10
identifying 100:9 110:4 129:5 145:25

identities 23:14
image 47:6,11 48:6 63:23 65:13,22 85:8 95:13,17 96:7 102:21 103:2,3 131:14,21 132:22 154:7 171:19,19,21,21 175:22 176:3
imagery 131:17
images 67:14 68:7 85:5,6,10 85:19 86:17,23 94:13 95:5,17,19 95:25 96:1,2 98:11,11,12 103:5 115:10 121:23 122:20 122:21 132:1
imagine 60:12
immediately 118:12
impact 33:18
implicates 146:14
implies 78:15
imply 115:5
important 34:1
impossible 129:7 129:19
impression 126:15
improve 158:11
inclined 89:22
include 27:14 29:21 30:2 41:8 47:2,4,5 51:24

[include - interest]

52:3 87:11
95:13 107:5
123:3 125:14
126:6 133:20
141:10 154:22
170:5
included 23:8
48:24 52:8
55:11,15,20,22
55:24 69:4
79:13 85:10
97:23 103:5
125:8 161:12,14
162:14,25 163:1
163:5,9,15
179:14
includes 17:20
34:12 51:22,23
66:14 99:2
125:25 154:20
155:8 170:19
including 23:13
26:22 28:22
32:10 36:13
66:13,16 127:8
138:5 148:18
157:17 163:18
166:19
inclusion 54:10
incorporate
36:10,12
incorporated
181:12
increase 105:16
increased 105:19
increases 117:8
incredibly 54:16

independent
103:20,22
147:16
indicate 86:12
137:17 162:20
indicated 43:13
51:16
indicates 51:20
86:9 113:16,23
indicating
179:14
indication 86:7
individual 1:4
9:14 38:7 69:2
71:23 76:5,15
79:16 88:17
96:7 103:24
128:13 129:16
131:9,16 132:4
132:14 138:8,14
138:17 141:9
144:22 148:25
151:17 152:21
153:5,7,11
156:15 167:19
individual's
167:19 168:4
individually 9:8
75:10 129:17
individuals
17:22 77:1 87:4
126:12 129:20
145:18,19
148:20 149:21
154:11
industry 116:17
inefficient 82:24

inflows 28:23
information
10:12 12:20
13:13,13,15
14:22 15:19
21:14,25 32:8
39:2,3,6 43:12
45:1 46:21
48:12,18,23,25
49:3 50:12
53:25 60:11
61:23 63:24
66:12,16,23 67:2
67:3,4 68:4,15
71:4,5,6 73:19
75:18,19 81:14
83:24 85:5
87:12,23 88:5
95:24 103:19
114:18,24
115:20,20
128:16 129:8
130:10,13 131:5
133:4,5 135:1,5
135:7,11 137:9
142:4 144:2
146:14 148:17
152:11 155:1
158:8 159:10,11
159:16,16,22
165:16 169:25
170:24 173:13
175:25 176:7
initial 46:12,14
106:24 120:21
initially 34:2
input 65:6 135:9

inside 20:12
insights 32:1,1
instance 119:1
154:3
instances 153:22
154:14
instruct 14:24
103:18 147:14
instructing
143:7
instruction
148:13
instructions
72:25
instructs 7:21
intellectual
146:15
intend 20:2,22
76:9
intended 38:19
74:25 97:18
99:3 100:17
107:17 108:4
112:20 124:1
125:9,11,16
126:8,16
intends 113:23
intent 75:4
intention 47:8
116:7 160:18
interacting 30:6
interaction
152:21
interactions
146:9
interest 33:20
150:9,13,19
162:4 164:19,19

CONFIDENTIAL

interested 32:25 45:13 71:24 78:12 115:24 134:15 172:13 174:14 178:16
internal 8:21 147:8,14
internet 5:7 19:3 37:7 75:1 100:18 107:18 108:6 112:21 124:3 125:17 126:2,3 147:3,10
interpose 14:20
interpretations 142:14
interrogatories 3:15 79:23 141:21
interrogatory 74:13 76:19,24 80:2,4 135:22,23 139:5 140:25 141:15,17 142:11 143:4,18 145:11
introduce 10:23 56:10 62:21 108:8 140:5
introduced 73:4 118:18 119:21
introducing 64:2 73:1 79:19 83:11 92:24 101:15 111:11 113:8 136:6
invest 70:1

investment 35:11 89:20
invite 127:15
invoice 117:7
involve 147:19
involved 14:14 15:9 18:18 25:11 31:13 104:4,9 148:4 152:5 153:10,13 158:25
involvement 27:1 103:25
ip 137:5
issue 151:10
issues 15:9,10
items 30:15

j

j 119:4
jack 5:24 9:19 12:25 74:10 84:21 87:13 100:4 109:8 112:12 127:14 127:20 130:6 148:1
jackbaumann 2:14
jeffrey 17:22
jersey 175:5
job 14:12 16:8 17:5,8
joe 84:1,3 87:4 88:20 90:22,25 91:4
john 2:11 5:24 54:15,18 179:5

join 18:25 89:22
joined 5:20 18:23 70:19
joining 19:15,20
jones 54:15,19
journey 158:23
jpeg 102:21
june 103:9,10

k

k 14:6 27:6 119:4
kathleen 2:18 6:2 8:21
kathy 12:25
keep 47:16 66:6 66:9 79:15 86:4 95:25 96:23 132:13 144:5,24 155:15,18
keeps 39:4
key 17:20 34:1
kin 178:15
kind 26:2 27:21 30:8 37:17 42:23 49:18 52:25 54:4 62:7 70:8 89:6 97:7 98:7 136:25 156:7 158:12 160:19 173:15
kits 29:23 30:8
kmccarthy 2:21
know 8:2,5 9:18 10:14 16:16 17:3 18:10,11 19:2,8 27:7 33:2 34:19 35:14,22

35:25 36:2 38:2 38:23 39:6,13 42:11,25 43:15 54:17 57:1,5,14 57:17 66:8 70:20,24 71:2 73:15,17,19 74:9 74:23 75:2,23 76:9,14 77:12 80:17 82:5,8,16 84:1,3,12 86:14 86:21 87:19 88:4 89:20 95:24 96:3,3,20 98:9 102:1,21 104:7 105:13 108:23 109:4,5,9 112:13 113:1 116:7,19 117:1,9 119:24 125:15 125:18 126:7 127:24 128:13 128:16 131:3,5 133:18,19 134:1 137:13,16 140:21 143:1,8 143:16 144:4,7,9 145:2 146:24 148:11 151:25 152:14 156:11 156:14,17 157:7 157:11,14,15,22 158:1,10 159:10 159:17 160:13 160:20,22 161:8 161:16 162:21 162:23 163:1,3,4 163:24 164:3,4

[know - little]   Page 22

164:12 165:8,24
166:3,4
knowable 39:3
71:6,19,20 128:3
128:4 132:18
knowingly
126:25
knowledge 28:13
75:9,20 112:16
113:3 116:6
127:13 145:8
149:12

l

l 27:6,6
label 98:4
labor 99:6
landed 88:21
landing 37:4,7,9
38:9 39:1 72:13
166:19 167:6,16
language 17:2
20:1 87:20 97:6
123:12 141:14
large 83:18
85:18
larger 48:7
49:14
largest 35:16
launch 10:7
law 2:7 5:22
lawyer 75:2
layout 61:3,13
lead 17:22 25:4
172:14
leaders 26:9
leads 17:21 27:4
28:9,12 50:6

learn 53:9
114:18
leave 115:4
led 158:17
left 76:7 172:18
175:8
legal 2:19 25:21
46:4 75:17 77:9
91:9 92:15
96:25 97:13
103:18,20,23
139:18,24
140:18 141:6,14
142:13,14,18,20
146:6 179:1
182:1
lehi 8:18
length 13:7
lengthy 12:9
letter 179:20
level 25:1 71:21
130:22 134:20
137:3
levels 58:19
levers 173:14
liability 1:13
license 3:17,19
3:21,23 17:12
28:17 66:19
69:13 70:4 83:2
90:10 93:16
94:9 100:15
101:2,25 102:7
102:16 103:12
111:14,25
113:12,19,24
114:2,22 116:22
117:11 118:7,9

118:13,16
120:11
licensed 69:23
70:3 81:22
90:18,25 91:20
92:11 94:9,17,24
96:6 99:22
100:9,23 106:23
108:5 110:5,12
110:25 111:8
112:3,21 114:11
118:6,11 120:23
125:13 126:5
127:7
licenses 66:12
69:7 97:8,10
98:24 99:2
103:9 104:11
105:12 112:9
116:9,13,20
licensing 66:4,16
69:17 70:10
79:13 80:7,11
81:21 89:24
90:4 91:15 92:3
92:20 93:10,18
99:25 100:8
105:10 110:4,21
115:25 116:3
117:15 122:23
123:11 124:2
limit 24:5
limitation 96:21
limitations 54:21
103:8 104:11
105:11 112:9
116:13,20

limited 1:12
15:10 21:14,17
21:25 23:13
28:22 53:25
66:15 82:9,10
141:5 158:8
line 77:21 169:4
179:14 181:7
182:3
link 10:9 38:3
39:14 40:6 61:9
114:10 176:1
list 12:1 33:13
46:20 49:9
65:16,17 80:15
80:22 81:11,12
85:22 94:20
109:6 110:23
118:24 119:8,11
119:15 133:17
155:19 170:11
174:3,11,20
175:24
listed 24:15
72:20 94:21
97:24 99:18
181:7,17
listing 181:7
lists 79:13 81:3
94:16 172:20
174:20
little 19:25 57:8
61:12 63:5
65:13 66:6 71:1
81:2 95:12
117:6 119:25
123:7 164:3

CONFIDENTIAL

live 34:23 170:5	39:7 46:17 48:6	163:10 165:19	**making** 63:4
lived 170:5	50:10 52:5 54:2	170:2 175:16	91:11 125:22
living 34:18	54:3,4 56:25	**looks** 11:21	153:14 173:11
llc 1:7,12 16:23	57:15 60:3	61:11,11 122:3	**manage** 24:14
llp 2:3,12,15	61:14,22 63:15	136:19 170:11	24:19
load 108:10	65:24 67:24	**loose** 155:12	**managed** 26:6
loaded 68:23	75:7 77:20,20	**los** 2:13	**managers** 23:15
local 72:3 125:21	88:5 93:5 95:10	**lot** 31:8 43:11,20	158:11
125:22 126:18	100:12 103:6	80:25 87:1 88:1	**managing** 153:3
127:6 147:1	104:19 109:20	95:21 115:2	**manual** 81:6
locate 38:7 99:5	110:25 111:15	**lots** 32:21,21	**map** 168:22
located 8:16	113:5 116:23	52:23 158:19	**mapping** 85:8,19
137:5	117:6 121:25	160:17,17	95:17,25 98:3
location 1:21	137:10 140:3,22	**low** 150:7	130:12,19
53:21 65:1	161:7 164:21,24	**lucas** 17:23	132:20
84:17 111:1	171:4 172:9	**lunch** 15:3 66:7	**mark** 1:3 5:12
160:10 173:21	173:18	88:15	55:18 65:1
175:12	**looked** 29:13		131:8 146:4
locations 67:12	65:25 90:14,23	**m**	154:16 155:6
80:20 99:9	102:3 108:21	**m** 1:11 26:16	157:12,23
lodge 142:10	112:5 113:18,22	**madam** 179:10	158:16 159:17
logged 42:14,18	156:16 169:14	**madison** 2:4	160:22 162:24
logic 99:18	170:16 171:18	**magistrate** 1:12	169:23 170:12
login 10:7 55:10	**looking** 31:22	**main** 20:20 25:6	171:8,21 172:7
161:7	32:23,24 33:19	29:23 37:18	173:4
logo 168:6	33:24 48:19	39:13,25 40:5	**marked** 10:24
long 13:5 16:10	51:17 54:19	42:5 68:24	56:12 62:23,25
19:7 23:4 74:3	55:7 57:3,20	72:14,16,18,20	64:3,4 73:3
79:8 84:7 101:9	58:3,25 63:15,18	93:21,24 122:1	79:21 83:16
137:13 159:11	64:15 86:15	132:19 154:17	93:1 101:16
163:19,22 164:6	89:8 90:11 99:9	167:25 168:14	108:9,11 111:12
165:24 166:4	99:10 104:21,24	169:17,19	113:9 118:20
longer 66:6 81:2	107:2 109:2,24	172:17 173:25	119:22 124:14
151:20	124:22 133:18	**maintain** 43:9	136:8 140:7
longevity 74:3	133:25 141:19	**major** 35:2	165:1,2 176:12
look 20:12 24:19	155:22 159:15	**majority** 24:17	**marker** 86:5
26:17 31:1,6,7	159:24 160:8	69:18 91:24	**market** 89:6
31:10 33:17	161:21 162:12	110:11 152:2	106:2,7

CONFIDENTIAL

[marketing - myheritage.com.]   Page 24

CONFIDENTIAL

[n - objected]   Page 25

n			
n 2:1 3:1 5:1 14:5,5,6,6	**narrowness** 80:18	175:6,8,12	**nrs** 142:1

n 2:1 3:1 5:1
  14:5,5,6,6
name 5:14 6:15
  18:5,10 26:17
  44:24 47:1 52:4
  52:10 53:14,16
  53:20 54:2,23
  68:11,18 111:2
  128:21,21,25
  129:2 130:15
  132:7,9 134:9
  138:9 154:5,6,14
  154:22 156:1
  163:17 166:18
  169:24,24
  173:13,24 179:6
  180:3,4,15 181:3
  181:4,21
named 55:17
  169:21 178:9
names 36:10,13
  51:15,19 54:14
  55:24 66:14,21
  67:12,25 68:2,5
  68:20 80:9
  125:9 127:22
  128:13,20 129:6
  129:10 130:17
  131:1 138:3
  142:3 146:13
  148:16 154:4,20
  154:24 155:11
  159:21 173:19
narrow 104:15
  169:18 170:1,4
  174:13

narrowness
  80:18
native 100:12
nature 128:23
navarro 1:11
navigate 37:25
navigation 167:3
  174:16
necessarily 86:7
need 6:25 8:1,4
  11:10 16:20
  42:15 44:4
  45:16 47:10
  50:24 53:15
  57:7 70:1 74:23
  79:1 94:25
  106:3 107:25
  133:8 135:17,19
  140:21 161:15
  167:11
needed 95:8
needs 115:17
negative 7:8
negotiating
  104:1 119:10
nevada 1:2
  34:12,16,18,24
  65:1 66:20,22
  70:21 71:3,17
  80:5,16,24
  127:23,25
  128:14 129:10
  129:23,25 130:4
  131:4 133:4
  134:19 135:25
  136:12,18,23,24
  137:11 170:7,7
  170:12 174:6

175:6,8,12
never 138:17,18
new 2:8 18:22
  42:12,13 43:18
  43:19 44:2,6,8
  44:10 71:8,16
  103:6,8,11
  110:12 173:23
  175:4
newly 110:24
newspaper 31:6
newspapers
  23:24 41:15
newspapers.com
  41:15
nods 7:7 72:7
non 7:5 83:21
  115:20 166:18
nonregistered
  45:24 46:7,7,18
  61:1 78:7
nonregistered's
  46:24
normally 104:8
  117:12
nostalgia 106:5
notarized 179:15
notary 179:25
  180:10,18
  181:15,23
  182:23
note 5:5 179:13
notes 115:4
notice 3:8 11:19
  11:22 12:14
  13:16 145:20
noticing 5:17

nrs 142:1
number 3:7 4:1
  10:23 11:1,18
  12:3 16:15,21
  23:11,23 56:11
  62:21 63:1 64:5
  65:5 66:11,20
  73:4 76:24
  79:19,22 80:2,4
  80:8 85:16 86:2
  86:2 93:3 99:21
  111:8 113:8
  117:16 120:19
  122:12 125:7
  127:21 128:18
  128:19 129:9,20
  129:20,22
  132:16,24 133:2
  135:23,24 136:6
  136:24 139:5
  141:1,18 179:8
  179:14
numbers 181:7

o

o 5:1 14:5,6 18:8
  27:6
oath 8:8,10
object 7:20
  14:23 46:3
  49:25 75:16
  77:8 91:8 92:14
  96:24 97:12
  100:19 103:17
  139:17,23
  142:19 147:11
objected 12:4
  147:6

CONFIDENTIAL

[objection - organization]   Page 26

objection 7:23 14:20 112:22 140:17 142:11 147:23 148:2	**offering** 42:14 65:19	104:13 108:17 109:7,20 110:1,7 113:13 116:19 118:5,18,23	**operated** 43:10
objectionable 127:20	**offers** 39:18	119:2 130:5	**operating** 28:22
objections 3:14 9:23 77:18 79:23 80:10 141:12	**office** 5:22 76:3	133:2 135:1	**operation** 35:15 36:8
objective 32:15	**officer** 27:5	136:19 137:4	**operations** 1:6,9 1:10 16:18,22 179:7 180:3 181:3
obtain 91:5 118:12 121:20 138:7	**offices** 2:7 8:18 72:3	140:3 141:19,24 143:10,17 146:22 147:21 148:15 154:10	**opportunities** 104:21 114:7
obtained 138:5 138:19	**official** 180:15 181:21	155:10 157:3 164:7,13,25	**opportunity** 114:5
obtaining 27:24 70:21 138:25	**offline** 100:5 130:7	165:24 166:6,15 167:23 168:9	**opposed** 21:6 153:6
obtains 138:2 139:6 141:25 145:12,13	**oh** 61:19 81:22 141:21,23	169:6,20,22 171:7,20,23 172:6,16,23 174:5,18,25 175:19	**opt** 51:6
obviously 9:23 29:24 35:3,13,18 47:10 52:21 91:24 98:10 110:14 140:10 163:22	**ohio** 179:2	**older** 110:14 140:10	**optimize** 32:15
occasions 42:10	**okay** 7:3,10,11 7:14,24 8:19 9:7 9:11 10:4,15 11:9,17 12:16 15:5,15 16:5 19:8,24 22:11 23:11 24:6,7,25 25:21 26:2,18 29:16 31:15 34:4 35:1 37:1 41:17 42:25 45:9,15,18 46:16 47:16,21 50:7 51:4 55:13,17,25 56:10 58:2,7,12 58:24 59:10,24 60:6 62:6 63:18 64:9 65:12 74:21 77:24 78:19 80:4 81:7 83:17 87:3 89:4 91:14 93:5 96:5 96:18 97:5 100:13 101:20	**oldest** 164:4	**optimizing** 158:10
occurred 148:7 148:8		**once** 57:14 150:1 151:18 167:10	**option** 48:17 50:5,25 59:3 61:6 114:20,21
october 1:19 4:5 5:4 73:7 94:6 112:2,10 178:9 178:17 179:4		**ones** 35:2 42:14 107:13 113:22	**options** 40:1,15 41:1 45:8 48:8 48:16 49:23 50:22 58:22 60:21 61:6 62:4 171:7 172:3 176:2
offer 38:8,11,12 39:20 41:6 42:2		**ongoing** 116:8 160:19	**order** 15:5 47:10 96:2 157:21 160:6
offered 79:4		**online** 72:23 77:4,7,17 87:22 100:25 103:13 120:11	**ordered** 127:16
		open 123:9	**organization** 25:5,7 26:8,10 26:12 27:4,8,23 28:10,12 32:12 35:12,13 53:13 70:1 73:21 75:6
		opened 175:1	
		operate 23:16 121:10	

CONFIDENTIAL

[organization - particular]   Page 27

76:3 85:17 86:5
130:16 149:4
152:13 153:1
161:18
organizational
23:13 28:7
95:18
organizations
25:10 26:3
68:25 69:6,8
90:14 106:13
organized 24:24
25:1 131:18
158:12
organizes 53:13
orient 42:1
original 75:6
85:2,9 94:10
97:25 107:7
125:19 126:3,16
178:13
originally 18:23
86:1
osborn 2:6,7
5:21,22
outcome 178:16
outflows 28:23
outlines 171:2
outside 138:15
138:24 145:24
147:13
overall 26:5
86:19 89:12
92:10 104:23
overarching
26:2
overs 65:24

overview 28:21
overwhelm
52:23
owned 19:17
ownership 96:13
owns 25:15
69:11

p

p 2:1,1 5:1 27:6
p.m. 88:13 125:1
125:4 166:10,13
176:24 177:1
package 22:24
22:25 23:8
39:23,24 40:1
44:15 47:25
48:3 50:18,19
51:3 58:19,21,21
58:23 59:1,3,5
59:18 65:19
176:2
packages 40:1
58:19,22 60:22
62:4 155:3
171:2
page 3:2,7 11:21
37:4,7,9,18,21
38:2,3,4,9,13
39:1,10,13,14
40:5 42:5,11
44:18 45:1,3
46:17 47:6
48:12,14,15
49:22 50:9,13,21
50:25 51:2
57:21 58:3,8
59:20,24 60:8,10

60:21 61:1,6,7,8
62:3,8,14,18
63:2,6,12,17,22
64:6,16,18,23,24
65:4,7,14,18
67:24 68:1,3
72:12,14,14,16
72:21 73:10
78:8 80:12,15
84:4 93:3 95:14
96:2 101:17
111:20 129:17
130:14 131:14
131:18,21,23,24
132:3,5,10,10,12
132:14,15,17
140:19 141:24
154:17,19,25
155:2 156:16
167:6,16,24,25
168:14 169:13
169:14,17,20
170:24 171:1,11
172:2,7,8,11,17
173:25 175:23
175:23 176:6,7
179:14,16 181:7
182:3
pages 56:19
67:11 108:15
129:18 166:19
178:10
paid 20:23 21:16
47:22 50:11,22
51:5 69:22,24
70:10,12 80:7
82:17 86:11
98:23 105:10,19

107:4 139:14
painless 6:21
paper 86:1 98:11
paragraph 57:4
57:5 60:4 75:8
93:16 94:15,16
95:10,11 96:12
97:7 106:21
107:3 118:5
parameters
155:21,25
parent 23:18,19
24:13 115:18
parents 54:24
part 32:20 33:6
34:5,9 39:25
42:14 43:7
44:14 45:6
74:12 79:4
81:14 83:3
86:18 90:13
92:10 102:22
123:16,19
126:19 129:5
130:11 133:6
135:2,12 145:8
146:23 151:20
160:14 162:15
164:5 173:6,14
181:9
participants 5:7
particular 40:14
94:21 109:5,11
112:25 119:18
124:7 125:24
130:11 131:9
137:11,21
152:24 155:11

CONFIDENTIAL

[particular - place]   Page 28

156:11 161:22
particularly
  155:14
parties 5:10
  28:18 89:25
  90:5,10,18 92:3
  93:17 115:15
  144:18 178:15
partner 88:1
partners 132:2
parts 48:10
party 80:8
  143:21 144:11
  144:17 145:1,6
pass 123:4
password 10:14
  133:9
path 40:15 61:5
pattern 114:5
pay 69:13 70:4
  80:14 82:20
  83:2,6,9 97:9
  117:13
paying 20:2 23:7
  32:18 33:4,10,15
  36:14 38:21
  116:4,21 122:11
  123:13 135:12
  135:17,19,24
  136:2 156:23
payment 117:21
  118:13,16
  123:16 135:5,6
payments
  117:25 118:10
pays 66:19
people 20:2,7,14
  20:19,22 21:1,2

22:7 24:13 25:8
25:8 31:5,21
34:16,17,22
35:17 51:16
104:23 110:16
115:14,15
119:10 134:13
137:10 138:12
139:13 146:17
147:2,6 153:10
160:16 161:24
162:13 172:13
people's 150:13
peopleconnect
  80:7 90:15,20,21
  93:11,19 94:24
  95:5 96:6 100:1
  100:8,24 101:6
  102:2,8,9,16,24
  103:10,15 104:5
  104:10,14,18
  105:11,19
  106:23 110:4,21
  112:1,4,19
  113:19,25 114:3
  114:12,19
  115:16,18 116:4
  116:22 117:11
  118:12 119:1
  122:23 123:2
percent 69:20
percentage
  38:23 82:15,16
  151:25
perfect 130:25
perfectly 161:13
perform 21:22
  35:18 46:8

performs 38:25
period 51:6
  59:16 61:4
  82:10 86:25
  87:14 91:23
  102:14 103:9
  104:25 105:4
  107:12 110:11
  110:14 112:14
  117:17 118:1
  121:7 127:16
  137:12 157:9
  159:10 165:17
periods 117:8
permission 11:8
  77:3,6,17 78:1
  127:4,9 140:23
  144:21
perpetual 118:9
  118:12,16
person 22:2,3
  29:11 50:23
  79:1 134:9
  137:17 150:20
  152:5,6 153:14
  154:1,5,7 160:8
  160:9 162:4
personal 23:2
  51:15 76:8
  134:23 142:3
  146:13,20
  148:17
personally
  119:17 166:2
  180:11 181:15
perspective
  141:5

phone 152:15
  179:3
photo 48:7 49:14
  50:3,16 131:16
  131:17,24 132:3
  133:12 138:9,20
  140:23 153:6,16
  153:23 154:3,4,8
  154:24 155:6
photograph 47:3
  47:5 49:22
  67:10 131:9,10
  131:20 132:7
  139:22 154:14
  166:19
photographs
  23:2 34:15
  36:10,13 66:14
  66:17,21 125:9
  127:22 131:3,6
  131:12 138:3,4
  142:3 143:15
  146:13,16,16,19
  147:3 148:16
photos 34:17
  76:8 132:5
  138:25 139:7
  145:14 146:4
  147:10
pick 140:5
picture 61:9
  171:10 172:1
pictured 56:23
pieces 132:11
place 5:10 42:7
  49:9 54:24
  67:23 68:12
  116:16 129:25

CONFIDENTIAL

130:14 159:23
178:9
placed 39:20
130:4 161:23
places 48:21
123:10 153:19
plaintiff 143:25
144:25
plaintiff's
163:17
plaintiffs 1:6 2:2
3:8,15 5:20,23
6:15 11:19
13:20 15:21
55:17 74:18
79:23 138:6
142:1 143:19
144:15 145:4
146:3,8 154:14
161:22 165:21
165:21 166:22
169:21
plan 20:3
played 33:11
plays 34:1
please 5:5,16 7:6
7:9,13 9:18
10:16 11:11
14:4 56:25 57:5
87:15 101:11
117:2 120:1
127:15 165:12
173:10 179:12
179:12
plenty 125:19
po 176:20
point 43:6 44:19
45:7 77:4 145:3

policies 138:23
148:18
policy 53:5,11
139:3 149:10,13
150:25 151:4,6,7
pollak 27:6,6
pop 43:1,4 48:11
166:20 168:9
170:15 171:9,12
171:16
pops 11:5
portion 29:14
54:11 56:24
83:1 101:12
104:24 105:4,5
139:20 140:13
147:24
portions 31:1
portray 34:15
portrayed 34:23
portrays 34:17
position 16:10
16:11
possesses 133:5
possibilities 54:6
possibility 50:5
59:7 133:1
possible 6:21
10:3 43:19
48:20,25 51:20
52:6 55:14,22
65:17 78:12
130:21,22 161:5
possibly 39:5
159:22
potential 45:12
51:19 52:7 55:8
78:17,19,21,24

110:23 172:13
173:4
potentially
38:17 45:4
122:23 132:23
potentials
160:20
practically
149:24
practice 53:5,11
119:9
preceding
178:10
precluded
103:11
predates 149:18
predominant
42:6
predominantly
152:3
preparation
76:21
prepare 12:17
12:23 13:2,14,24
15:6,16,22
prepared 12:2
12:13 15:6
present 2:22
5:16 13:9 35:19
35:23 52:15
60:24 73:16
74:6 87:15
90:17 91:21
127:11 143:12
164:9
presentation
115:9

presented
162:21
president 2:19
16:9 17:7
pretrial 44:23
pretty 60:20,20
73:22 82:10
92:10
prevent 8:13
preview 38:20
47:2,4 62:7
154:23
previous 107:5
previously 90:23
169:14
price 86:12,14
87:9 88:21
97:24 98:16,21
pricing 83:22
86:8,10
primarily 33:23
90:19
primary 21:19
25:10 29:21
32:15 39:15
64:19 70:8
92:16 99:1
158:9
prior 18:12,15
18:17 19:15,20
36:2,4 50:1
52:17 73:24
74:11,15 90:7
92:2 93:23
102:3,14 107:9
113:22 178:6
privacy 136:25
146:14 147:9

[privacy - published] Page 30

150:9,13,19
151:8
privilege 147:15
privileged 14:23
75:19,21,24
148:4,9,11
proactive 78:15
160:14 162:15
proactively
160:2,4 161:8
probably 12:8
35:15 56:17
57:10 61:4 70:7
73:20 76:9 82:7
82:10 98:15
106:6 110:16
123:11 149:18
152:3,12 158:12
165:17
problem 56:4
166:8
procedure 53:6
53:11 148:20,24
149:13,16,18
150:13 151:17
180:5 181:5
procedures
138:24 148:18
proceed 6:6
proceedings
177:1
process 32:21
33:6 40:4 67:11
71:22 81:6
92:17 102:11
133:7 134:6
135:3,13 138:1
141:25 144:7

145:8 146:24
150:25 153:3
158:25 164:23
166:16
processes 40:4
procuring 35:5
produce 86:16
88:2 89:9,9,13
98:10 130:16
produced 13:20
15:20 74:12
87:14 96:6,15
101:4 108:19
109:10 127:15
product 25:4
26:6,8,10,20
27:16 32:12
39:20 42:13
43:19 44:10
60:22 73:20
158:11 161:17
production 35:4
74:19 83:3
86:19 91:12
130:15 179:16
179:17,22
products 18:18
18:20,23 36:9
39:18 40:17
41:5,18,21 42:19
43:2,15 49:3
125:12
professional
178:5
profit 35:20,22
36:3,5
program 3:13
73:5,22 81:2

87:24 91:25
92:6 126:12
145:17
project 13:18
prominent 43:7
promote 27:10
41:17,20 43:1
78:1,4,11 125:12
promoted 42:19
44:3
promotes 27:1
promoting 43:14
44:6 78:8
promotion 78:15
promotions
78:23
prompt 59:11,15
prompting 65:14
property 146:15
proportion
69:16 82:12
protected 123:3
provenance
114:17
provide 7:2,23
24:3 30:4 34:6
81:11 95:23,24
103:19 108:24
114:23 119:11
122:15,16 123:2
130:3 133:8
136:4 139:8,21
141:1 142:7,12
142:22 143:14
145:5 150:15,16
171:3
provided 13:16
19:21 21:9

50:18 74:4,14
97:17 122:4,18
127:8 141:3,7,10
141:11 142:9,25
143:4,5 144:5,17
144:19 145:20
160:19
provides 22:3
103:13 115:12
140:14 150:12
providing 61:21
144:16 145:1
155:21
provision 103:14
104:11,14,18
105:12 112:9,14
114:14 116:14
116:21
public 37:4,7,9
38:8,12 40:5
69:3 72:11
167:15 180:10
180:18 181:15
181:23 182:23
publication
127:5
publicizing
147:9
publicly 38:25
125:20 126:1,2
146:25
publish 72:5
87:22 92:18
127:1,9 144:22
144:22
published 19:11
68:7 75:1
100:17,25

CONFIDENTIAL

[published - recognize]

107:17 108:5 112:21 124:2 125:10,16 126:9 126:17 147:3

publisher 74:24 87:21 126:3

publishers 100:16,24 107:16 108:4 112:20 124:1 125:7,15,19 126:8,16

publishing 17:13 17:24 91:12

pulled 53:15 160:24 162:8

purchase 30:11 31:23 45:16 59:12 65:15 66:4 69:10,13,17 81:16 82:13,17 87:6,9 114:1 158:17,18

purchased 20:3 23:9 29:5,11,13 44:22 81:20 82:6 83:5 86:21 87:3 88:17,20 89:17 90:25 125:13 126:5 159:7

purchases 38:24 66:12 91:4

purchasing 31:5 81:24,24 91:15

purpose 12:7 14:17 22:10 32:13 36:11

45:3,9 51:13 58:16 62:6 95:23 97:18 99:3 102:6,10 107:3 110:8 137:1 158:9,14 172:11

purposes 90:13 91:11 104:17 110:16 117:13 164:1

pursuant 3:9 11:19 94:17

put 9:11 52:9,10 53:25 67:2 77:3 77:6,17 109:9 116:16 141:18 143:17

putative 143:19 143:25 144:15 144:25 145:5

q

quality 5:6,6

queried 165:22

query 80:18 165:23

question 7:1,12 7:16,18,22 9:16 12:11 29:8,9 31:3,19 33:16 41:19 53:17,18 57:10 59:13 66:25 77:11 80:1 101:8,9 104:15 107:25 108:1 109:3 131:7,13 143:2,6

143:9 147:12,23 148:2,10 152:17

questions 9:4 76:7 101:19 109:1 176:14

quickly 150:4

quinn 2:12,15 5:25 6:1

quinnemanuel.... 2:14,17

quinton 14:3,5 17:20 28:2

quite 84:7 130:18 132:20

quotation 95:11

quote 76:25

quoted 97:6

r

r 2:1,6,7 5:1 18:8 26:16,16 84:2

raina 2:3,5 5:19 6:15 134:1

range 89:14

rare 152:3

rate 97:9,10,22

rates 107:4

reach 127:3

reached 175:20

reaching 76:15

read 57:5 60:4 99:15 101:13 140:13 147:23 147:25 178:13 180:5,6,12 181:5 181:6,17

reading 122:1 178:12 179:20

really 25:1 91:1 96:9 114:4 116:7,9 117:10 133:13

reason 104:22 150:21 151:11 179:15 181:8 182:3

reasonable 89:14

reasonably 111:3 160:11

reasons 38:15 151:13

recall 13:11 49:7 88:21 157:25 171:14 176:20

recalling 157:14

receipt 179:19

receive 51:12,20 52:23 85:25 132:1 138:11 148:10 160:6

received 15:1 56:2 79:6 85:12 85:13 95:4 102:24 122:22 125:14 126:6,23 143:24 144:21 146:2 147:13 148:16 149:20 150:1 151:22,24

receives 75:25 76:25

receiving 126:20

recognize 63:2 64:10 73:7,9 79:24 83:23,24

CONFIDENTIAL

93:7 101:21	139:22 140:15	48:10 49:15	165:23 166:23
108:13 111:18	144:9 147:24	51:14,17,21,25	167:19 168:17
113:14 118:21	148:21 149:1,2,6	52:3,11 54:8	168:18,21
120:5 124:16	149:8,9,11,21	55:19,20 58:5,10	170:11 172:4
136:9 140:8	150:3,8,9,10,19	62:11 67:9,15,20	174:2,14,16
recognized	150:22,24 151:1	68:6,6,13 74:1,7	**recurring** 53:1
114:19	151:12,15,18,19	82:21 83:9	116:8
recollection 89:5	152:20,21 153:8	85:24,25,25	**redirect** 44:17
recommendation	153:10,14,25	86:16 89:1,18,20	44:18,20 48:11
119:7	154:1,2,6 155:5	90:10,18 92:13	50:21 65:14
record 5:4,11	155:13 156:12	92:18 95:6,9	**redirected** 49:22
7:8 9:12 10:10	156:14,15,16,17	96:21 97:19	154:25 167:24
10:16,18,21	157:5,20 159:12	102:17,17,23	171:25
11:10,13,16 14:4	159:18,22	104:24 105:5,7	**redirection** 45:1
18:6 22:1 26:6	160:23 161:5	106:17 115:21	**redwood** 2:16
28:1 33:17	162:20 163:25	115:21,22,24	**refer** 12:8 16:19
34:18 36:20,22	164:11 165:20	117:17,19 118:4	20:1,19 21:1
36:25 37:3,16	165:20 166:9,11	119:12 122:13	22:6
44:25 45:8	166:14 168:4,15	123:15,17,21	**reference** 95:13
48:14,24 49:11	170:14,15	125:20 126:12	179:8 180:2
50:8,14,25 52:7	171:15,22	127:7 128:14,18	181:2
52:9 53:15,20,24	175:21 176:1,19	129:23 130:3,10	**referenced** 85:21
54:5,22 55:13,25	176:25 181:9	130:23 132:14	94:12 96:14
56:3,6,7,9 57:25	**recorded** 1:4 5:9	132:17,24	99:12,13 107:13
59:21,25 63:20	5:11	133:11,22,24	108:22 109:11
63:22,24 65:22	**recording** 5:6,9	134:2,5,5,12	120:8,13 124:22
74:16 76:12	**records** 17:9,11	141:4,8,11 145:4	180:11 181:15
78:6,8 86:16	17:13 22:25	145:14,21,22	**references** 93:16
87:17 88:8,10,13	24:3 25:3 27:9	153:12 154:12	94:15 120:16
89:7 91:16	27:21 30:3,5	154:19,22	124:8
96:10 101:12	31:6,8,8,12,21	155:11,18,24	**referring** 20:13
114:17,24 115:7	33:3,5,14 35:5	157:9,13,16,24	**reflect** 106:22
123:9 124:25	37:10,13,19 38:6	158:17,20,21,22	**reflects** 84:8
125:2,5 127:18	38:14,17 39:12	158:24 159:1,6	**refresh** 11:2,4
129:20 130:2,23	39:22,22,24	160:3,15 161:2,4	136:1
132:9,16,21,22	40:13 43:9	162:3,8,9,16,25	**refreshed** 11:7
132:22 134:8,19	44:24 45:4,6,13	163:8,11 164:8	**regardless** 45:20
134:23 138:8	45:15 46:9,15	164:10 165:14	91:14

CONFIDENTIAL

[register - response]   Page 33

register 22:8
  133:8,12
registered 21:3,4
  21:5,7,8,10,15
  21:18,20 22:2,7
  22:13,15,18 42:8
  43:13,16 44:3,23
  45:21 46:19
  47:13,18 48:4
  49:16 51:22
  57:13,22 60:12
  61:2 65:11 78:7
  79:16 133:6,10
  133:14 134:17
  137:18,18,22
  138:18 139:14
  154:18 155:14
  156:6,18 157:5,8
  157:18,22 178:5
registers 22:3
registration
  133:7 135:3
regular 160:4
related 15:3
  28:14 36:7
  39:22 101:6
  134:14 138:24
  144:10 164:24
relates 97:5
  107:4
relating 66:15
  142:15
relationship
  15:12 95:7
  116:8 121:3,8
  152:6
relative 15:13
  39:10

relevant 108:25
  109:3 162:10
  163:22
reload 171:11
remain 96:14
remind 50:9
reminder 58:22
removal 149:2,7
  153:4,15
remove 128:8
  147:7 148:16,21
  149:6,21 150:19
  150:22 151:1
  153:8,12,14,21
  153:25 154:2,5
removed 151:12
  151:16,18,19
  152:20 153:24
  154:1,6 166:22
removes 172:19
removing 128:10
  150:24
repeat 23:22
  156:8
rephrase 7:13
  12:11
report 18:1,2
  31:16
reporter 1:23
  6:4,24 7:6 26:14
  101:13 147:25
  178:5 180:7
reporter's 178:1
reports 17:16,18
  17:20
repositories
  123:9

represent 5:17
  6:15 56:20 73:6
representation
  58:4 76:18
representative
  161:11
represented
  109:23 128:12
  131:2
representing
  5:14 57:6
represents 111:7
  152:4
request 74:18
  141:3 148:20
  149:2,14 150:1,4
  150:15,17,21
  151:14,15
  152:24 153:13
  153:14,15
  178:12 181:9,11
requested
  101:12 117:25
  147:6,24
requesting 10:14
  151:12 153:11
  154:1,5
requests 12:13
  148:15,19 149:3
  149:20 150:4,20
  151:23,24 152:8
  152:14 153:4
require 44:12
  135:8,10
required 99:25
  135:5 142:1
  179:25

requires 78:14
  139:20
reread 101:10
research 31:10
  35:14 42:15
  53:3 100:22
  106:20 156:9
researchers
  114:16
residents 34:16
  115:21
resolved 155:6
resource 35:17
resources 123:8
respect 12:21
  27:9,18 42:24
  47:18,20,23
  88:18 92:13
  106:8 111:8
  145:11
respectively
  142:19
respond 14:24
  141:13 151:14
responded 139:8
  142:11
responding
  151:11 164:19
response 7:9
  76:24 128:18
  135:23 139:5
  140:25 141:17
  142:5,6,22 143:4
  143:18 144:14
  145:11 147:20
  148:19 159:25
  163:17

CONFIDENTIAL

responses 3:14
  7:5 13:16 74:13
  76:19 79:22
  135:22 141:15
responsibilities
  17:8
responsibility
  24:22 25:24
  27:9,18
responsible 17:6
  17:10,23 18:17
  24:9 25:2,5,7
  26:3,10,11,21
  27:13,24 28:3
  53:10 153:3
responsive 74:18
rest 113:6
restate 29:8 31:3
  31:17 41:19
  59:13 101:8
  108:1
restated 3:23
  113:11
restriction 77:22
restrictions
  75:12,14
result 6:25 46:8
  46:20 50:9
  58:17,25 65:14
  105:11 154:19
  154:21 165:23
  172:24 175:4
results 3:11
  21:24 45:10
  46:13,17 47:2
  48:20,20 50:3
  60:10 61:1 63:7
  63:10,15 65:6,10

65:20 78:23,24
  78:25 155:14,19
  155:23 165:22
  170:11 171:8
  172:7 173:16
  174:11 175:20
retain 85:24
  96:1 161:2,4
  163:19
retained 165:25
return 76:10
  155:13
returned 48:6
  154:20,21
  170:11 171:25
  175:13 179:19
returning
  136:16 155:23
reunions 106:5
revenue 28:14
  28:24,25 29:1,5
  29:10,12,19
  30:13,19,22 31:1
  31:2 34:5,10
reverse 75:11
review 13:13,19
  15:21,24 56:25
  62:12 119:2
  121:22 149:4
  162:16 176:22
  178:12 179:13
  180:1 181:1
reviewed 12:20
  13:12,15 15:20
  76:21 119:20
  150:5 163:23
reviewing
  118:25 140:2

reviews 76:1
revision 4:5
rich 54:22
right 8:7 10:22
  11:25 17:3 18:9
  20:13 23:9,10
  25:16,20 33:24
  34:24 36:2,6
  37:3 47:12
  50:22 54:5 56:5
  56:18 57:3,4,19
  60:7,16 62:20
  63:1 64:1,25
  66:3,11,23 69:8
  71:5 72:19
  79:19 83:12
  88:6,8 89:2
  92:20 96:21,23
  98:2 107:14
  108:11 109:14
  112:16 113:16
  114:9 115:8
  117:20 118:18
  119:21 123:2,4
  124:24 125:6
  127:19 135:21
  136:11 143:17
  146:11,15 151:2
  151:7,10 154:13
  160:9 164:21
  165:10 166:8,25
  167:5,15 168:3
  168:18,21,23
  169:8,12 170:8
  170:10 171:5,8
  171:10,24
  172:24 173:22
  174:17 175:3

176:9,13
rights 91:5 92:12
  97:4,8,10 98:24
  99:2
role 14:9 17:15
  18:3,12,15 33:11
  34:2
roles 17:19
  18:16
room 8:19
round 33:1
  112:13
routed 149:4
row 48:21
rpr 1:23 178:21
rule 1:3 3:9 9:1
  11:19 76:11
  86:24 178:12
rules 6:22 180:5
  181:5
run 68:19
  136:22
running 92:6

s

s 2:1,12 3:6 5:1
  14:6 18:8 26:16
  179:16 181:8,8
  182:3
s.com. 23:24
safekeeping
  178:14
sake 155:16
  164:1
sale 28:24 29:23
san 2:20
save 113:5 134:8
  134:22 158:22

CONFIDENTIAL

159:15 164:1
saved 152:9
  159:1,12,14
saving 70:14
  162:20
saying 103:7
  109:18 118:15
  161:19
says 11:7 49:7
  58:13 60:16
  64:16 75:8 77:5
  80:12 95:12
  97:6 103:9
  118:6 122:11
  142:6 144:15
  176:20
scale 128:22
scan 17:12 72:4
  82:22 89:10
  93:4 98:10,11
scanned 67:10
  67:10,17 69:14
  70:13 86:17,23
  95:4 103:5
  121:23
scanning 17:24
  72:3 88:1 92:17
  98:14 99:1,7,12
  102:10 121:24
  132:1
schedule 40:23
  117:14
schedules 53:1
school 3:13
  64:16 66:20
  67:23 68:12,15
  73:5 75:5 80:5
  84:11,13,16,17

95:20 106:5
111:2 146:24,25
169:10 172:20
174:15,20,24
schools 70:21,22
  71:3 110:15
  126:19 127:23
  127:25 129:15
  129:23,25
  168:23 169:2,4,4
  172:20
scope 12:9,12,21
  16:1 22:23 30:5
  109:5
screen 5:8 11:18
  42:16 56:13
  57:9 58:17
  61:17 62:24
  64:5 83:15
  106:22 167:1,14
  172:24
screenshot 4:4,6
  57:20,21 58:2,8
  58:13 60:7,8,9
  60:10 61:8,12
  62:14,17 63:14
  170:16
screenshots
  56:22 57:4,6,11
  57:15 60:4,5
scroll 11:25 12:4
  56:23 57:19
  58:7 61:7 64:6
  65:4 74:24 80:2
  84:6 98:3
  101:18 108:15
  111:15,22 112:8
  113:12 117:1,2

119:24 140:12
140:19,21 141:7
165:10
scrolled 99:16
scrolling 59:20
  84:4
seal 180:15
  181:21
search 3:11,12
  4:6 21:20,22,24
  26:4,5,21,23
  27:18 29:12
  31:2 33:9 34:7,8
  34:11 37:11,12
  37:18,18,21 38:1
  38:5,7,13,13,25
  39:11,13,14,15
  40:5,9,10,13,13
  44:24 45:3,5,10
  45:19,25 46:8,8
  46:12,13,14,16
  46:17,20,25 47:2
  47:13,20,23 48:6
  48:19 49:14
  50:3,8,9,13
  58:17,25 60:9,25
  63:7,9,15,19
  64:13,18,20,21
  64:21,25 65:6,9
  65:16 68:8,17,19
  72:14,16,19,21
  78:16 92:19
  121:11 134:5,5
  136:12,13,22
  151:21 154:17
  154:19,21 155:7
  155:13,13,14,17
  155:19,20,23,25

156:8 158:10
160:5,14,15
162:15 163:7
165:13 167:18
168:4,7,8,12,14
168:16 169:7,14
169:16,17,18,19
169:20,21 170:1
170:8,9,10 171:8
172:6,7,17,24
173:2,4,14,16,23
173:23,25 174:1
174:2,6,7,7,11
175:4,14,20
searchable 95:1
  125:23
searched 37:14
  78:6 136:15
  137:10 154:16
  154:18 155:11
  156:2,6 166:1
searches 40:2
  44:21 55:5
  155:16 156:7
  166:18
searching 29:6
  37:22 38:5 40:5
  40:12 47:19
  51:17 58:5
  78:18,22,24
  91:19 145:24
  163:17 164:18
  172:21 173:3
second 26:13
  56:3 75:8 94:1
  97:7 111:20
  118:5

CONFIDENTIAL

[section - shot]   Page 36

section 95:10
  97:5 98:22
  99:19 103:6,7
  106:21 107:13
  113:23 115:13
  116:15 118:10
  122:10 141:6
  167:21,25
secured 126:11
see 6:23 10:14
  11:1,20,21 31:5
  31:21 46:8,13
  47:11 50:12,13
  58:12 60:9,15
  62:12 63:9 64:7
  65:2,9 83:20
  99:17 100:21
  111:1,20 112:8
  112:24 115:6
  120:19,20
  121:25 124:10
  124:18,20
  127:20 141:20
  141:21 160:2
  163:8,10 165:4,7
  165:7 167:6,14
  168:7,18,22,23
  169:9 170:11,12
  171:21 172:19
  173:6 174:19,23
  175:8,15
seeing 115:23
  124:6 165:22
seek 138:16
seeking 155:22
seen 5:8 11:23
  33:8 56:15
  156:15 175:24

selected 50:18
  50:20 51:2
selection 112:15
selling 34:5
semiannual 41:2
send 11:9 50:24
  51:8,10 52:20
  53:2 54:5 72:1,2
  76:9 160:4
  162:1
sends 161:3
senior 14:10
  26:9
sense 16:25
  45:12 46:15
  61:21 69:16
  71:16 90:11
  94:7 171:22
sent 53:7 72:23
  72:24,25 73:12
  78:8 163:8,15,16
  164:8,12,23
  165:15,18
  178:12
separate 30:8,11
  30:11 75:21,23
  81:20 131:3,12
  154:12
separately 29:1
  29:12,17 137:20
september 93:17
  94:5
sequential 102:5
  102:7
series 93:24
  108:18 129:3,3
served 160:12

service 22:4 25:6
  25:8 29:22 33:1
  34:9 35:15
  38:18 42:13
  43:7,20,22 46:1
  46:11 48:9,10
  55:10 59:8,9
  61:18 78:11,13
  79:2 89:23,23
  105:6,23 115:11
  132:19 133:13
  134:4,13,14
  138:24 139:13
  139:20 140:4,14
  149:4 150:3,5
  152:12,23 153:1
  160:2 172:4
services 19:21
  21:9,17 22:11,17
  22:23 23:8 30:7
  35:8,16 38:11,18
  39:21,21,22 79:4
  103:13 106:19
  106:20 115:3
  143:23 172:5,15
sessa 1:3,4 3:11
  5:12,13 55:18,18
  56:15 63:7 65:1
  131:8 146:3,4
  154:16 155:6,7
  160:22 162:24
  169:24 170:12
  171:8,22 172:7
  173:5,17 174:6
  175:6,16 179:6
  180:3 181:3
sessa's 156:1
  157:4,12,23

  158:16 159:18
  160:23 162:24
  173:24 175:5,13
set 3:15 12:10
  21:17 34:14
  79:23 95:19
  96:4 116:18
  117:16 131:20
  133:9 160:1
  167:11 175:16
  178:10
seventh 3:23
  113:11 117:20
  117:20,24 118:7
shakes 7:7
share 10:5,8,9
  10:25 11:17
  48:8 56:1,13
  73:2 79:20
  83:15 92:25
  101:15 134:15
  166:25 176:11
shared 11:7
  13:15 32:2,9
  64:4 96:16
  140:23
sharing 56:14
  62:24 125:20
sheet 83:20,21
  83:22 86:8
  111:4 179:14
  181:7,10,18
  182:1
sheets 83:19
shores 2:16
short 137:15
shot 131:16
  153:7

[shots - specifically]   Page 37

shots   132:9
show   10:25
  11:18 43:14
  48:15 62:8 63:6
  63:13 65:18
  91:18 124:12
  143:10
showed   155:18
showing   43:9
  45:9 50:25 62:6
  65:17 78:11,17
  83:12 108:11
  115:10 124:15
  141:24 165:9
  172:25
shown   60:10
  63:10 64:18
  179:16
shows   48:18
  171:6
side   18:19,21
  29:22 30:2,23
  31:2 75:11
  141:6 153:21
  168:21
sign   22:16 61:25
  62:8,11 137:14
  155:8 170:19,22
  171:5 176:1
  178:13
signature   178:20
  179:15
signed   20:15,23
  21:15 42:6
  45:21 93:12
  111:21 112:1
  138:18 141:16
  141:17 142:5

180:13 181:18
significant   35:10
  92:5 98:16
signing   138:12
  143:22 179:20
similar   19:21
  27:20 42:22
  65:25 83:8
  90:21 135:14
  136:22
similarly   1:5
  46:22 113:17
simplified   95:21
simply   117:23
  133:8 173:14,20
sincerely   179:21
single   82:16 98:9
sir   179:10
site   10:7 33:21
  36:12 42:24
  45:14 52:5
  60:13 61:4
  65:11 114:15
  115:6 121:17
  125:11 130:14
  137:8,23,24
  138:4,13 140:24
  142:4 150:3
  154:15 155:22
  161:7 166:20
  172:5
sitting   139:19
  145:3 162:23
situated   1:5
size   47:5,6
slightly   113:21
slowly   93:4

small   19:13 47:5
  47:7 69:20 82:7
  82:15 86:25
  92:10
smaller   87:1
  90:22 92:8
  106:15
smoothly   6:23
solutions   179:1
  182:1
somewhat   12:9
  110:8
sorry   12:7 14:19
  19:4 23:22
  37:24 44:1 46:3
  49:15 54:22
  56:19 61:2 72:9
  78:7 84:21,23
  89:9 97:16
  101:7 103:16
  107:21 112:11
  128:17 130:1
  132:3 141:20
  143:17 157:25
sort   16:2 55:4
  60:8 63:9 65:9
  81:7 104:13
  115:5
sorted   102:24
sought   116:16
sound   84:24
sounds   8:6 66:11
source   70:6,8
  81:5,11 82:1
  92:6 114:16,18
sources   14:15
  29:19,21 30:13
  67:9 68:22,24

79:12 81:19
  82:5,11 121:6
  130:12,18
  132:20
space   42:16
  104:20 105:1,25
  116:18
speak   6:25 13:23
  14:2,17 15:13,15
  49:4 59:8
  112:12 136:25
speaking   15:5
  17:2 20:1 34:22
  75:3,5 84:20,25
  149:24 152:7
speaks   77:10
  100:20 107:22
  112:23,25 124:4
  139:24 140:18
  141:7,8
special   126:14
  131:20,22
specific   16:11,16
  16:20 24:8 27:8
  27:11,18,21,22
  32:6 33:17,18
  37:15,21 38:1,4
  39:14 47:1
  64:18,23 68:11
  78:3 104:7
  110:11 131:24
  132:9 141:9
  148:6,6,9 165:19
  173:15,16
specifically
  12:10,23 24:15
  38:3,3 64:14
  91:18 99:17

CONFIDENTIAL

[specifically - subscription]   Page 38

125:18 126:9 134:24 145:17 157:15 162:1 169:15	119:23 136:6 140:6	**states** 1:1 39:23 58:20 100:16 123:25 135:23	**subjects** 138:25 145:14 147:19
specification 102:21	**standard** 23:6 **standards** 96:11 **standpoint** 130:16	**statistically** 34:22	**submission** 3:13 73:5
spectrum 54:4		**status** 146:10 156:25 157:21	**submit** 72:1 **submitter** 75:4
speculate 151:4 151:13	**stands** 117:4 148:14	**stay** 89:23	**subscribe** 31:14 38:18 47:10
speculating 144:20	**start** 37:2 57:3,4 70:15 133:23 163:10,12 167:22 168:13 173:22	**stenotype** 178:9 **stipulate** 9:21 **stop** 176:10,10 **storage** 164:1	48:9 60:16,25 79:2 172:15
speculation 147:4		**store** 131:15 132:10 137:14 158:8 159:11 161:13 163:21	**subscribed** 21:3 42:22 48:1 57:12 137:23 180:10 181:14 182:21
spell 14:4 18:5 18:10 26:13	**started** 6:22 9:12 70:20 73:23 82:25 90:7 166:21 167:13		
spelling 26:17		**stored** 132:18 **stores** 165:14 **stories** 38:17 **strauss** 2:3 5:20 **street** 2:4,7,12 2:20	**subscriber** 33:15 45:22 46:19 47:22 48:2,3 50:11 58:1 60:1 63:19 136:16 156:19,20,23 157:1 158:24 159:4,5
spellings 54:4 173:19 175:17	**starting** 21:11 33:20 97:6 121:6,8		
spoke 14:3 **spoken** 92:4	**starts** 80:10 95:11		
sports 129:18 131:16	**starve** 66:8	**stretch** 8:4	
spouse 133:16	**state** 5:16 81:8 81:13 84:15,16 125:22 126:18 127:6 128:5,7 136:15,18 137:8 137:11 170:5 178:2 180:10 181:15	**structure** 23:12 23:14 28:7 36:8 85:24 95:18 113:4	**subscribers** 20:2 20:10,14 22:12 23:7 32:19 33:4 33:10 36:14 38:21 46:23 51:23 63:11 69:2 133:3,5 135:12,15,17,19 135:25 136:3,12 136:17 155:15
spreadsheet 3:16 3:20,25 4:3 81:8 83:13,18 84:6 88:19 100:6,9 109:10 110:3 124:13			
		structured 129:13	
		student 128:25 **students** 125:21 129:1,14,17	
spreadsheets 79:11	**stated** 76:20,25 143:19	**stuff** 80:11 **subcategory** 169:8	**subscribing** 32:25 79:17 166:18 172:3
sriram 26:11,16 **ss** 178:3 **staff** 125:21 **stamped** 83:18 101:17 108:12 108:20 111:13 113:10 118:19	**statement** 107:15 108:3 112:19 180:13 180:14 181:19 181:19	**subject** 12:11 138:2 139:7 145:21 146:14	**subscription** 20:3,24 21:16

CONFIDENTIAL

28:24 30:5,12
31:2,23 36:9
38:24 39:17
40:16 41:2,5,7,8
41:10,13,14,18
41:21 42:19
43:2,15 44:4,12
44:15 45:6,8,16
46:10 48:15
49:3,5,23 50:18
50:22,25 51:5
59:12,16 60:14
60:21 61:6,24
62:4 65:15,19
78:14,14 79:4
125:12 135:13
139:15 154:25
155:4 157:21
158:17,19 159:8
170:24 171:2,7
176:2,7
subscriptions
27:1,10 28:15
29:5,11,13,22
30:1,4,23 31:6
34:6 40:19,22
41:2 44:19 45:2
78:1,4,9
subsection 114:9
122:10
subsequent
112:18 113:2
118:4 129:18
subsequently
157:1
subset 21:14
24:21 54:25
55:9,11 88:16

160:16 161:10
substantive
142:6
successful 31:13
31:22 158:22
159:2
sufficient 142:15
suggest 52:6
74:13
suggesting
109:12 160:11
suggestion
107:16 108:3
112:19
suggests 74:24
77:25 94:16
100:16 123:25
suitable 115:16
suite 2:4,20
179:2
sullivan 2:12,15
superior 179:1
supplement 4:1
supplied 115:16
support 149:1
suppose 11:10
supposed 171:12
sure 7:4 10:6,10
17:1 20:1 26:14
31:18 32:24
33:7 35:3 39:5
43:6 44:21 57:8
57:24 61:17,19
61:19 64:19
71:23 73:17
74:17 75:3 80:3
81:25 84:13
86:5,6 91:11

93:6 104:16
108:23 121:4,16
127:19 130:8
136:4 137:25
140:12 141:13
141:23 152:16
164:1 172:2
173:1,11 174:22
suspect 9:25
85:9 110:12
111:3 123:7
swear 6:5
swim 153:17,23
154:12
switch 141:19
switched 82:24
sworn 6:9 178:7
180:10,13
181:14,18
182:21
system 109:21

t

t 3:6 14:5,6
tab 110:18
table 117:6
118:6 165:14
tag 111:17
take 5:10 7:6 8:1
8:2,11 31:16
36:17 37:13
60:19,20 62:2,3
63:20,22 66:7
89:1 93:4
111:15 116:23
117:25 121:25
132:19 153:20
170:24

taken 6:17 57:12
132:17 172:6
176:5 178:8
takes 41:14
171:1 172:2
176:1
talk 6:16 19:24
56:22 100:4
109:21 130:7
talked 39:13
62:5
talking 17:4
22:20 37:2 67:3
81:20 86:24
88:16 131:25
132:3
target 90:13
team 24:8,21
25:2,3,4,14 26:6
26:20 27:17,23
28:3 32:10,11
39:9 53:12 76:3
76:4,14 114:19
117:11 131:11
131:16 150:5
153:17,23
154:11,12
teams 24:11,18
27:12 129:18
technology 25:5
26:6,8,11,20
27:17 35:6 39:8
98:13
tell 18:9 35:25
57:15,20,24
109:15,16
119:16 129:12
156:3,22,24

CONFIDENTIAL

[tell - titled]   Page 40

157:3 161:20 178:7	181:6,9,12	131:7,13 137:19	11:15 18:17
tells 85:6 161:21 164:17	**thank** 57:2,9,18 60:6 63:5 93:6	137:19 139:12 141:6 143:1,5,12	23:4 26:19 34:18,18 36:17
ten 154:4	98:6 101:20	148:2,3 150:18	36:21,24 40:7,18
tend 8:2 85:24 86:4	111:16 113:13 117:4 120:3,4,6	152:3,25 157:19 158:2,2,7,13	49:16 53:8 56:1 56:8 61:4 79:8
tennis 131:11	121:25 165:12	159:9,9,11,20	79:12 82:10
term 20:4,9,18	166:7 176:16	161:14 162:7,14	86:25 87:14
20:20,25 31:11	**thereof** 178:16	164:7 165:3,4	88:9,12 92:7
89:9 112:9	**thiagarajan**	176:9	96:15 98:15
114:13 137:15	26:11	**thinking** 46:6	99:8 102:15
156:16 164:6	**thing** 61:20	**third** 3:17 28:18	104:25 105:4
terminology	91:10 99:15	89:25 90:5,9,17	107:12 110:11
19:25 20:16	173:21	92:2 94:1,8	110:15 112:3,10
32:5,6	**things** 14:25	100:15 102:4	117:17 121:6,7
terms 4:5 22:4	32:24 76:8	143:20 144:11	123:20 125:1,4
46:1,10 104:5	115:5 160:10	144:17,18 145:1	125:13 126:5
113:23 116:3	164:2 171:3	145:6	127:15 137:12
138:12,12,24	172:12 175:7	**thirty** 179:19	149:19 153:3
139:9,13,20	**think** 9:16,20	**thoughts** 128:17	157:2,9 158:9
140:4,14 141:2	12:8 13:22	**thousands**	159:10 163:22
142:7,8,23,24	15:20 17:2 18:7	155:13	165:17 166:10
143:11,13,22	19:13 20:25	**three** 13:4,6	166:13 174:5
146:9 173:4	21:17 24:6 32:6	117:8 131:11	176:14,22,24
test 115:13	34:4 35:13	145:10	**timeframe** 19:12
testified 6:10	45:18 46:2 49:4	**thumbnail** 47:5	19:14
31:20 45:18	49:8 50:4,8	48:5,14,22 49:8	**times** 13:1,4
90:1 139:12	57:16 59:10,17	49:21 50:14,16	95:21 105:14,18
150:18 170:23	59:17 61:12	61:21 65:13	129:1
testify 8:25 12:2	66:9 75:3 76:11	175:22 176:4	**timing** 52:22
12:13 15:6	76:20 84:20,24	**ticket** 152:23	98:19
131:19	88:24 89:11,25	**tie** 132:6,8	**title** 16:8 64:16
testifying 8:14	91:23 92:4	133:10,12,24	95:14 96:13
73:12 167:4	93:21,23 98:2,2	**tied** 159:7	102:25
testimony 9:22	100:11 107:2,20	**ties** 68:11	**titled** 73:5 83:20
50:1 88:24	109:14 113:3	**time** 5:15 7:21	103:8 111:4,14
178:10 180:6,7	114:19 116:6,25	7:21 9:14,15	121:18 124:18
	117:18 122:1	10:17,20 11:12	

CONFIDENTIAL

[titles - try]   Page 41

titles 86:9 122:4
  122:13 123:6,14
  124:9
today 6:1,16,22
  7:21 8:2,8,14,16
  8:25 9:24 10:12
  12:3,14,17 13:14
  13:25 15:7 16:6
  16:20 19:24
  24:5 70:25
  76:20,21 87:24
  121:15 139:19
  145:3 162:8,24
  170:17 176:15
  176:18
today's 15:22
todd 1:8 3:2 5:12
  6:8 9:9,18 27:5
  103:25 178:7
  179:9 180:4,9
  181:4,13 182:20
told 56:2 160:8
  161:23 162:12
tony 3:11 63:7
tools 23:1 31:25
  42:15 43:23
  44:2
top 26:7 33:13
  58:3,12 60:8,15
  61:8 62:17
  74:11 84:5
  109:15,16
  117:20 124:18
  168:6 170:10
  174:1,23 175:4,8
topic 23:11
  28:21,23 36:6,7
  36:7,11 66:3,11

66:18 125:7
  127:20,21 133:2
  138:1 146:11
  148:15 154:13
  164:22 166:16
topics 12:1,2,10
  12:14 15:7,11
  28:20 36:16
  37:2 166:16
total 69:15 70:24
  86:10 89:8
  111:6,7 117:11
  117:21 135:24
  136:19,23
townsend 2:20
track 28:14,25
  29:4,10,15,16
  30:22 31:10
  79:5,15 99:24
  132:13 134:25
  137:4 143:24
  144:5,24 155:10
  155:18 157:8
  158:13,15,24
tracked 79:10
  137:20
tracking 39:9
  152:24
traditional
  43:20 110:13
traditionally
  117:22 122:8
traffic 137:25
tranche 112:13
transcribe 17:13
  67:25 72:4
  89:10

transcribed
  63:24 67:14,20
  67:21 68:5,20
  178:9 180:7
transcribes 68:2
transcript 9:21
  178:12,13
  179:12,13 180:5
  180:12 181:5,11
  181:17
transcription
  17:24 67:11
  82:23 85:7
  92:18 94:25
  95:5,8 178:10
transcriptions
  86:17
transferred
  124:10
treat 176:21
tree 21:12,19
  23:1 39:21 44:7
  51:15,18,19,21
  51:22 52:5,11
  53:14,22,23
  55:24 106:16,18
  133:15,19,20,21
  133:23,24,25
  134:1,7,9,10,19
  134:22 158:23
  159:2,7,14,25
  160:24 161:9,23
  161:24 162:4,13
  162:14,21
  163:18
trees 30:6 54:1
  133:15 134:15
  168:7

trevor 17:23
trial 20:13,14,15
  20:23 21:6,16
  22:12,14,14,17
  22:22 23:4
  31:14 32:18,21
  33:3,10,14 42:17
  42:21 45:21
  46:19 47:22
  48:2 50:7,10,15
  50:23,24 51:4
  57:12,22 58:1,4
  58:24 59:4,11,15
  59:16,18 60:1
  63:19 135:2,8
  136:23,24
  139:14 156:23
  157:1,12,14,20
  158:20
trialed 48:1
trialer 156:21
trialing 22:24
trialists 46:23
  63:11 135:15,16
trials 22:22
  31:22 51:23
tried 154:23
true 40:7 47:12
  178:9
truth 178:7,7,7
truthfully 8:14
try 7:9 18:7 29:9
  43:24 44:25
  48:5 53:1 55:8
  56:1 67:22
  76:10 130:19
  132:8,11 153:21
  155:24,24 160:4

CONFIDENTIAL

[try - user]   Page 42

162:15 171:20
172:21 173:12
trying   16:4
   18:22 24:12
   31:4 32:22 49:7
   62:13 66:7
   98:16 99:5
   107:2,4 109:1
   113:5 157:25
   158:11 171:14
tune   173:16,16
tuning   173:20
turke   2:3 5:19
turkestrauss.co...
   2:5
turn   89:24
   144:17
tutorials   44:10
twin   2:16
two   17:21 26:9
   30:14 39:15,25
   40:4 41:4,12
   68:24 92:4
   128:17,17
type   19:18 30:8
   38:10 48:17
   60:9,9 67:12
   102:21 110:3,6
   158:14
typed   64:25
   169:23
types   25:4 27:13
   31:21 33:13
   38:16 41:24
   46:15 82:11
   83:9 94:23
   115:22,24
   129:16 172:12

typical   71:14
   96:9
typically   23:5
   39:19 53:3
   65:23 87:7
   102:12 164:5
typing   169:24

u

u   14:5 18:8 84:2
   84:2
u.s.   22:25 23:1
   41:7 58:19
   64:16 165:13,19
   169:9 170:4
   171:6 174:23
u.s.a.   65:2 170:7
   170:12 175:8
uh   7:7 41:11
   117:3 173:9
   174:17
uh's   7:8
ultimately   40:11
   142:19
understand   7:12
   8:7,11,24 9:3
   12:4 15:8 16:4
   17:6 24:12 25:9
   31:10 32:22
   35:24 38:10,16
   39:9 41:23
   43:18 45:4,7
   47:9 49:10,11
   57:2 78:13
   85:16 94:19
   107:3 109:2
   114:16 131:13
   132:11 134:21

137:7,21 148:1
152:16 155:3
158:3 159:3
161:19 165:11
172:3,11 175:23
understanding
   22:16 94:18
   97:14,15,17
   103:17,20,22
   111:7,10 130:25
   137:7,15 146:12
   147:16 149:9
understands
   48:25
understood   7:17
   22:19 89:16
   91:3 117:15
   130:24 154:13
   163:13 173:22
   175:19
unique   54:12
   104:22 129:5
   156:10
uniquely   104:25
   175:12
united   1:1 39:23
   58:20
unrelated   14:25
up's   43:1,4
   166:20
updates   160:19
upgrade   58:14
   59:1,5,7,11,14
urquhart   2:12
   2:15
use   20:19 22:9
   33:1 42:10 43:3
   43:25 44:2,17

55:1,2,6 67:4
69:7 70:16 78:1
78:3 81:17 82:2
92:13,20 99:3
106:6 123:5
128:21 133:21
134:2,4 137:14
138:3,14 139:21
140:15 141:4
142:2 146:12
158:12 175:7
user   21:18 22:2
   22:18 32:16,20
   33:15,19,25 34:2
   37:18 43:1,16
   44:4,7,9,23 46:7
   46:19,19 47:9,13
   47:18,22 48:2,4
   48:24 49:10
   50:7,10,15 51:14
   51:18 52:10
   53:9,21 54:19
   55:10,23 57:12
   57:13,22,22 58:4
   58:20,24 59:4,11
   59:15 60:8,13,19
   61:25 62:2,8,10
   63:9,18,19,21
   64:17 65:9
   77:21 78:7,11,16
   78:24 79:16,17
   91:18 133:14
   137:8,18,21,21
   137:22 138:13
   139:14 140:14
   141:7,10,11
   146:10 150:7,16
   150:17 151:12

CONFIDENTIAL

[user - want]   Page 43

152:4 153:18
154:18 155:21
156:6,18,23
157:6,7,12
158:12,14,17,18
161:21 163:23
163:23 164:6,17
166:18 172:11
173:15 174:13
user's 42:21,22
users 17:10
20:14,21,25 21:4
21:6,15,20 22:7
22:13,22 30:6
32:18 33:3,10,25
42:1,6,8,17
43:13,18 44:17
49:16 51:4,9,10
51:11,22 52:22
52:23 53:2,25
61:1,2 65:11
89:21 92:19
97:21 104:22
114:15 133:6,10
134:18,21 135:2
135:8 136:23,24
139:8,20 141:1
142:6,12,22
143:14 145:17
145:19,24
155:15 157:15
157:17,18,23
160:1 161:6
175:23
uses 36:11 42:25
69:11
usually 8:2
58:22 134:13

158:19
utah 8:18 178:2

v

v 179:6 180:3
181:3
validating 150:8
value 36:14 83:6
89:6,6,17 123:19
variable 99:8
variables 98:16
variations 54:3
varied 13:7
70:23 151:13
varies 71:13
163:21
variety 123:8
129:15,15
130:12 174:22
various 27:12
32:2,10 67:9
79:11 82:18
83:19 108:15
168:9 171:2
vary 150:16
varying 130:13
vast 69:18 91:23
verbal 7:5,9
verbally 150:2
verify 75:10,13
77:2
veritext 5:15
10:7 179:1,8
182:1
veritext.com.
179:17
versa 134:16

version 48:7
74:11 116:12
versions 65:25
73:25 74:6,15
101:3 143:11
versus 5:13
22:15 46:21
54:22 56:15
69:17,17 152:1
vice 2:19 16:9
17:7 134:16
video 1:4 4:7 5:9
5:11 167:3
videographer
1:25 5:3,15 6:4
10:17,20 11:12
11:15 36:21,24
56:5,8 88:9,12
125:1,4 166:10
166:13 167:12
176:24
view 20:12 21:24
21:25 45:8 46:9
50:16 58:5,9,10
61:6,10 63:20
65:12,22,22 78:8
78:25 155:5,6
157:4,10,23
158:3,5,16,19,20
159:7 170:14,15
171:15 172:4
175:21
viewed 96:3
156:12,13,14,18
156:20,22,24
157:12,16,19
159:6

viewing 137:8
virginia 1:10
virtually 5:6
visit 22:7 137:18
visited 20:22
137:11,17
138:17
visitor 22:10
37:10,24 38:13
38:24 44:22
45:19 46:18,25
47:18 48:4,18
49:21 57:13,23
60:13 78:6
154:17 156:18
157:5
visitors 22:9
38:10,20 44:17
44:18 45:10,25
46:24 49:15
61:1 65:11
137:5
volume 164:2
volunteers 69:1
vp 17:15 18:12
28:4
vs 1:7

w

wait 14:19
waived 179:20
walked 78:9
wall 2:11 179:5
want 9:11 17:1
19:24 39:6
56:21 69:4
74:10,15 80:1
84:5 89:24

CONFIDENTIAL

[want - yearbook]   Page 44

108:10 114:16 117:1 147:2 152:16 155:17 160:10 164:24 165:8 169:2,17 172:16 176:18 **wanted** 22:19 88:4 100:5 166:21 167:18 168:3 173:25 **wants** 91:7 **warm** 36:20 **washington** 178:3 **way** 22:8 23:15 29:4 32:18 39:12 40:8,10,12 42:18 44:8,13 52:9 57:16 64:19 84:7 85:16 88:2 90:1 96:6 98:8 108:23 118:1 119:16 134:17 137:4 138:19 144:6 145:9 146:1 152:15 158:15 163:3,4,7 173:1,24 175:5 175:20 **ways** 39:15 139:6 145:12 147:1 **we've** 16:3 36:16 39:12 44:8 50:4 60:22 62:5 69:23,24 79:7 82:24 95:7,7	113:18 116:18 121:1 175:1 **web** 42:5 81:4 125:23 **website** 10:5 17:10,14 19:2,9 21:2 23:3,25 24:10 26:22 27:2 28:24 29:7 29:14 30:16,17 30:20,21,23 32:20 35:7,9 36:3 37:17,19,25 38:9,13 41:15,16 41:21,22,23 42:3 42:9,20 43:1,8 43:10,14 44:16 45:25 47:17 56:22 60:25 63:14 68:8 71:25 73:7 96:22 114:23,25 115:1 121:11,13 121:15 137:5,11 137:17 138:10 138:15 166:17 168:1 **websites** 23:16 24:2,14,19 25:15 25:25 29:2,17 **weekly** 160:17 165:15,18,25 **weksler** 1:12 **welcome** 6:20 **went** 173:1 **wider** 57:8 63:5 119:25	**williamson** 2:4 **willing** 83:6 **wisconsin** 2:4 **wise** 23:4 **witness** 5:8,25 6:5,9 9:1,8 72:7 84:21 107:20 142:17 178:6,13 178:17 179:9,12 180:1,4,11 181:1 181:4,15 **witness'** 179:15 **wonderful** 129:14 **word** 22:9 44:17 **words** 106:6 **work** 13:18 14:14 17:12 24:13 35:14 39:8 52:24 67:13 69:25 71:22 83:1,3 87:2 88:1 92:1 98:18,19 99:2,12 132:1,20,25 **workbook** 108:16 **worked** 11:5 18:18,20 19:21 **working** 15:12 17:11 28:3 30:6 82:25 87:25 167:8 **works** 10:1 26:22 133:13 **world** 39:24,25 41:8,14 58:21,25 96:11 171:6	**writing** 109:9 **written** 31:24 53:5,11 87:5,19 138:7,20,23 139:7 141:25 144:10 145:4 152:9,20 **wrong** 98:1
			x
			x 3:1,6
			y
			yeah 8:21 9:25 20:11 22:21 31:4 32:7 36:19 41:20 43:4 47:15 59:14 61:3 67:6 68:13 74:20 84:17 87:18 99:11 100:11,12 104:17 113:7,7 119:25 120:2 127:14 131:8 134:4 140:1 141:22 143:8 152:19 171:12 176:22 **year** 71:11,14,14 71:17 84:7,9 95:14 102:25 111:1 112:13 118:1 129:2,2,3 **yearbook** 3:13 15:10 19:11 21:21 24:3,23 26:3,22 27:9,19 28:6,17 29:6,12

CONFIDENTIAL

[yearbook - york]   Page 45

29:14 30:2 31:8	102:16 103:12	159:18 160:23	90:24 91:4,6,20
33:2,9,22,23	106:8 110:22	162:25 165:13	92:3,11,12,21
34:7,8,11,15,19	111:5 113:19,24	165:19 166:18	93:11 94:13,14
34:23 36:10,10	114:11,24 115:7	166:19,22	99:21,24 100:10
36:13,13 37:10	115:20 116:4	167:19 168:4,21	100:16,23 101:6
37:15,25 38:7	117:17 118:6,8	171:4 172:4,7	102:10,13
39:11,14 40:3,4	118:11 120:8,11	173:2 174:14,15	106:23 107:16
40:6,9,11 41:6	120:11,24 121:3	**yearbook's**	107:17 108:4,5
44:24,25 45:20	121:11,20 122:4	68:12	110:5,7,21 111:4
47:1,2,4,13 48:6	122:4,13,15	**yearbook.com**	111:8 112:3,20
50:3,8 51:24	123:5,14,15,17	121:10	112:21 114:2
52:3,6 54:8,9,22	123:21,21 124:2	**yearbook.com.**	116:22 118:24
54:25 55:5,13,14	124:9 125:8,8,9	121:14	120:24 121:1,7
55:19,19 58:5	125:9,25,25	**yearbooks** 13:17	122:16,22
64:17 66:5,13,13	126:1 127:22,22	14:15 15:14	123:25 124:1
66:14,16,18,19	127:23 128:5,9	16:3 19:8 27:11	125:10,14,16,20
66:20,21,21,24	128:13,13,14,15	27:15,22,22,24	126:6,8,13,15
67:1 68:11,18,18	128:25 129:9,11	28:1 33:5,11	127:8,25 128:8
68:23 69:3,6,11	129:13,23,24	34:1,12 37:22	128:10,14,23
69:15,21 70:16	130:1 131:3,4,6	47:23 50:19	129:2,10 131:4
70:25 71:9,22	131:9,21,23,24	54:19 64:14,16	134:22 138:14
72:2,2,17 73:5	132:3,4,14,24	66:5,18 67:8,17	143:15 169:10
73:13 74:22,25	133:12 134:11	67:18 68:3,22,25	169:19 174:15
74:25 75:5,14	134:19 138:3,3,4	69:2,7,10,12,14	174:20,24
76:5,8,16,25	138:8,9,20,25	69:15,18,21 70:3	**years** 14:16
78:1,3,5,10 79:1	139:1,7,21	70:9,16,21,24	16:12 19:17
79:16 80:5,6,8,9	140:15,23 141:4	71:2,9,11,17	28:5 35:23 36:4
80:9 81:8,13,17	141:11 142:3,3	72:13 75:10	43:6 82:3 87:25
82:2,13,14 84:13	145:14,16,21,21	76:1,2 77:4,6,17	98:12 99:9
86:9,9,11,13	145:22 146:4,12	78:20 79:5	114:3,7 116:10
87:21 88:21	146:13,16,19,23	80:13,15,16,16	117:14 118:4
89:13,19 90:10	147:3,10 148:16	80:19,23 81:16	119:18 121:8
90:18 91:12,15	148:16,21,21	81:20,22 82:1,12	129:4 140:5
91:16,17 92:21	149:21,22	82:18 83:4,5,21	**yep** 108:2 111:23
94:17,23 95:1	152:20 153:6,19	85:21 86:21	**yesterday** 9:13
96:5,7 97:20,23	154:19,24 156:2	87:4,9,22 88:3	73:7
97:23,24 98:22	156:12 157:5,13	88:16,19 89:17	**york** 2:8
100:17,24	157:24 158:16	89:25 90:2,5,21	

CONFIDENTIAL

[zero - zooming]   Page 46

z
zero   165:23
zip   135:6,9,10,18
135:21 136:4,22
137:2,3
zoom   1:21
zoomed   61:19
zooming   166:7

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the
foregoing transcript is a true, correct and complete
transcript of the colloquies, questions and answers
as submitted by the court reporter. Veritext Legal
Solutions further represents that the attached
exhibits, if any, are true, correct and complete
documents as submitted by the court reporter and/or
attorneys in relation to this deposition and that
the documents were processed in accordance with
our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining
the confidentiality of client and witness information,
in accordance with the regulations promulgated under
the Health Insurance Portability and Accountability
Act (HIPAA), as amended with respect to protected
health information and the Gramm-Leach-Bliley Act, as
amended, with respect to Personally Identifiable
Information (PII). Physical transcripts and exhibits
are managed under strict facility and personnel access
controls. Electronic files of documents are stored
in encrypted form and are transmitted in an encrypted
fashion to authenticated parties who are permitted to
access the material. Our data is hosted in a Tier 4
SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and
State regulations with respect to the provision of
court reporting services, and maintains its neutrality
and independence regardless of relationship or the
financial outcome of any litigation. Veritext requires
adherence to the foregoing professional and ethical
standards from all of its subcontractors in their
independent contractor agreements.

Inquiries about Veritext Legal Solutions'
confidentiality and security policies and practices
should be directed to Veritext's Client Services
Associates indicated on the cover of this document or
at www.veritext.com.